

ELECTRONICS CORPORATION OF INDIA LTD.

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 1883 of 2011)

FEBRUARY 17, 2011

[S.H. KAPADIA, CJI, MUKUNDKAM SHARMA, K.S.  
RADHAKRISHNAN, SWATANTER KUMAR AND ANIL R.  
DAVE, JJ.]

*Committees: Inter se litigation between entities of the State – Resolution by Committees – Dispute between Public Sector Undertaking of Central Government and Union of India – Committees set up by Supreme Court by orders dated 11.10.1991, 7.1.1994, 20.7.2007 – Prayer for recalling these orders on the ground that the mechanism set up by Supreme Court in its orders had outlived their utility and in view of changed scenario – Held: The idea behind setting up of the Committees, initially called “High Powered Committee”, then “Committee of Secretaries” and finally “Committee on Disputes” (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD – The mechanism contemplated was only to ensure that no litigation comes to court without the parties having had an opportunity of conciliation before an in-house Committee – However, despite best efforts of the CoD, the mechanism could not achieve the results, for which it was constituted, and had in fact led to delay in litigation causing loss of revenue – Since the mechanism has outlived its utility, the directions contained in order dated 11.10.1991, 7.1.1994, 20.7.2007 are recalled.*

**ONGC v. CCE 1995 Suppl.(4) SCC 541; ONGC v. CCE 2004 (6) SCC 437; ONGC v. City & Industrial Development**

- A *Corpn.* 2007 (7) SCC 39; *ONGC and Anr. v. CCE* 1992 Supp (2) SCC 432; 1995 Supp (4) SCC 541 dated 11.10.1991; (2004) 6 SCC 437; (2007) 7 SCC 39 – referred to.

Case Law Reference:

- B 1995 Suppl.(4) SCC 541 Referred to Paras 5, 9  
2004 (6) SCC 437 Referred to Paras 5, 9  
2007 (7) SCC 39 Referred to Paras 5, 9  
C 1992 Supp (2) SCC 432 Referred to Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1883 of 2011.

- D From the Judgment & Order dated 13.12.2008 of the High Court of Andhra Pradesh at Hyderabad in Writ Petition No. 26573 of 2008.

WITH

C.A. No. 1903 of 2008.

- E Goolam E. Vahanvati, AG, P.P. Tripathy, ASG, Arijit Prasad, Kumal Bahri, D.D. Kamath, Rohit Sharma, Amey Nargolkar, B.V. Balaram Das, Anil Katiyar, Rupesh Kumar, Parijat Sinha, Reshmi Rea Sinha, Anil Kumar Mishra, Vikram, F Ganguly, S.C. Ghosh, B. Krishna Prasad, E.C. Agrawala for the appearing parties.

The Order of the Court was delivered by

O R D E R

- G S.H. KAPADIA, CJI. 1. Leave granted.

2. Electronics Corporation of India Ltd. ("assessee" for short) is a Central Government Public Sector Undertaking ("PSU"). It is registered as a Government Company under the

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ELECTRONICS CORPORATION OF INDIA LTD. v. 973  
UNION OF INDIA & ORS. [S.H. KAPADIA, CJI.]

Companies Act, 1956. It is under the control of Department of Atomic Energy, Government of India. A dispute had been raised by the Central Government (Ministry of Finance) by issuing show cause notices to the assessee alleging that the Corporation was not entitled to avail/utilize Modvat/Cenvat Credit in respect of inputs whose values stood written off. Accordingly it was proposed in the show cause notices that the credit taken on inputs was liable to be reversed. Thus, the short point which arose for determination in the present case was whether the Central Government was right in insisting on reversal of credit taken by the assessee on inputs whose values stood written off.

3. The adjudicating authority held that there was no substance in the contention of the assessee that the write off was made in terms of AS-2. The case of the assessee before the Commissioner of Central Excise (adjudicating authority) was that it was a financial requirement as prescribed in AS-2; that an inventory more than three years old had to be written off/derated in value; that such derating in value did not mean that the inputs were unfunctionable; that the inputs were still lying in the factory and they were useful for production and therefore they were entitled to Modvat/Cenvat credit. As stated above, this argument was rejected by the adjudicating authority and the demand against the assessee stood confirmed. Against the order of the adjudicating authority, the assessee decided to challenge the same by filing an appeal before CESTAT. Accordingly, the assessee applied before the Committee on Disputes (CoD). However, the CoD vide its decision dated 2.11.2006 refused to grant clearance though in an identical case the CoD granted clearance to Bharat Heavy Electricals Ltd. ("BHEL"). Accordingly, the assessee herein filed Writ Petition No. 26573 of 2008 in the Andhra Pradesh High Court. By the impugned decision, the writ petition filed by the assessee stood dismissed. Against the order of the Andhra Pradesh High Court the assessee has moved this Court by way of a special leave petition.

A 4. In a conjunct matter, Civil Appeal No. 1903 of 2008, the facts were as follows.

B Bharat Petroleum Corporation Ltd. ("assessee" for short) cleared the goods for sale at the outlets owned and operated by themselves known as Company Owned and Company Operated Outlets. The assessee cleared the goods for sale at such outlets by determining the value of the goods cleared during the period February, 2000 to November, 2001 on the basis of the price at which such goods were sold from their warehouses to independent dealers, instead of determining it on the basis of the normal price and normal transaction value as per Section 4(4)(b)(iii) of Central Excise Act, 1944 ("1944 Act" for short) read with Rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In short, the price adopted by the assessee which is a PSU in terms of Administered Pricing Mechanism ("APM") formulated by Government of India stood rejected. The Tribunal came to the conclusion that the APM adopted by the assessee was in terms of the price fixed by the Ministry of Petroleum and Natural Gas; that it was not possible for the assessee to adopt the price in terms of Section 4(1)(a) of the 1944 Act; and that it was not possible to arrive at the transaction value in terms of the said section. Accordingly, the Tribunal allowed the appeal of the assessee. Aggrieved by the decision of the Tribunal, CCE has come to this Court by way of Civil Appeal No. 1903 of 2008 in which the assessee has preferred I.A. No. 4 of 2009 requesting the Court to dismiss the above Civil Appeal No. 1903 of 2008 filed by the Department on the ground that CoD has declined permission to the Department to pursue the said appeal.

G 5. The above two instances are given only to highlight the fact that the mechanism set up by this Court in its Orders reported in (i) 1995 Suppl.(4) SCC 541 (*ONGC v. CCE*) dated 11.10.1991; (ii) 2004 (6) SCC 437 (*ONGC v. CCE*) dated 7.1.1994; and (iii) 2007 (7) SCC 39 (*ONGC v. City & Industrial Development Corpn.*) dated 20.7.2007 needs to be revisited.

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6. Learned Attorney General has submitted that the above A  
Orders have outlived their utility and in view of the changed  
scenario, as indicated hereinafter, the aforestated Orders are  
required to be recalled. We find merit in the submission made  
by the Attorney General of India on behalf of the Union of India  
for the following reasons. By Order dated 11.9.1991, reported B  
in 1992 Supp (2) SCC 432 (*ONGC and Anr. v. CCE*), this  
Court noted that "Public Sector Undertakings of Central  
Government and the Union of India should not fight their  
litigations in Court". Consequently, the Cabinet Secretary,  
Government of India was "called upon to handle the matter C  
personally".

7. This was followed by the order dated 11.10.1991 in  
*ONGC-II* case (supra) where this Court directed the  
Government of India "to set up a Committee consisting of  
representatives from the Ministry of Industry, Bureau of Public D  
Enterprises and Ministry of Law, to monitor disputes between  
Ministry and Ministry of Government of India, Ministry and public  
sector undertakings of the Government of India and public  
sector undertakings between themselves, to ensure that no  
litigation comes to Court or to a Tribunal without the matter E  
having been first examined by the Committee and its clearance  
for litigation".

8. Thereafter, in *ONGC-III* case (supra), this Court directed  
that in the absence of clearance from the "Committee of  
Secretaries" (CoS), any legal proceeding will not be proceeded F  
with. This was subject to the rider that appeals and petitions  
filed without such clearance could be filed to save limitation. It  
was, however, directed that the needful should be done within  
one month from such filing, failing which the matter would not  
be proceeded with. By another order dated 20.7.2007 (*ONGC- G  
IVth case*) this Court extended the concept of Dispute  
Resolution by High-Powered Committee to amicably resolve the  
disputes involving the State Governments and their  
Instrumentalities.

A 9. The idea behind setting up of this Committee, initially,  
called a "High-Powered Committee" (HPC), later on called as  
"Committee of Secretaries" (CoS) and finally termed as  
"Committee on Disputes" (CoD) was to ensure that resources  
of the State are not frittered away in *inter se* litigations between  
B entities of the State, which could be best resolved, by an  
empowered CoD. The machinery contemplated was only to  
ensure that no litigation comes to Court without the parties  
having had an opportunity of conciliation before an in-house  
committee. [see : para 3 of the order dated 7.1.1994 (supra)]  
C Whilst the principle and the object behind the aforesaid  
Orders is unexceptionable and laudatory, experience has  
shown that despite best efforts of the CoD, the mechanism has  
not achieved the results for which it was constituted and has in  
D fact led to delays in litigation. We have already given two  
examples hereinabove. They indicate that on same set of facts,  
clearance is given in one case and refused in the other. This  
has led a PSU to institute a SLP in this Court on the ground of  
discrimination. We need not multiply such illustrations. The  
mechanism was set up with a laudatory object. However, the  
E mechanism has led to delay in filing of civil appeals causing  
loss of revenue. For example, in many cases of exemptions,  
the Industry Department gives exemption, while the same is  
denied by the Revenue Department. Similarly, with the  
enactment of regulatory laws in several cases there could be  
F overlapping of jurisdictions between, let us say, SEBI and  
insurance regulators. Civil appeals lie to this Court. Stakes in  
such cases are huge. One cannot possibly expect timely  
clearance by CoD. In such cases, grant of clearance to one and  
not to the other may result in generation of more and more  
litigation. The mechanism has outlived its utility. In the changed  
G scenario indicated above, we are of the view that time has come  
under the above circumstances to recall the directions of this  
Court in its various Orders reported as (i) 1995 Supp (4) SCC  
541 dated 11.10.1991, (ii) (2004) 6 SCC 437 dated 7.1.1994  
and (iii) (2007) 7 SCC 39 dated 20.7.2007.

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**ELECTRONICS CORPORATION OF INDIA LTD. v. 977  
UNION OF INDIA & ORS. [S.H. KAPADIA, CJI.]**

10. In the circumstances, we hereby recall the following **A**  
Orders reported in:

- (i) 1995 Supp (4) SCC 541 dated 11.10.1991
- (ii) (2004) 6 SCC 437 dated 7.1.1994
- (iii) (2007) 7 SCC 39 dated 20.7.2007

**B**

11. For the aforestated reasons, I.A. No. 4 filed by the  
assessee in Civil Appeal No. 1903/2008 is dismissed.

**D.G.**

**Appeal pending.**