
(1999) 10 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeal No. 208 Of 1988

Collector of Central Excise

APPELLANT

Vs

Gayatri Glass Works

RESPONDENT

Date of Decision : 26-10-1999

Acts Referred:

Citation : (1999) 114 ELT 786 : (2000) 10 SCC 268

Hon'ble Judges : V. N. Khare, J;S. P. Bharucha, J;M. Jagannadha Rao, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. We are concerned with the period 1st March, 1979 to 1st March, 1980. During that period Item 23A of the First Schedule to the Central Excises and Salt Act, 1944, relating to glass and glassware, read : "... (4) other glass and glassware including tablewareThirty-five per cent ad valorem". Prior thereto, this sub-entry had related only to other glassware.

2. The respondents manufactured glass. They had cleared molten and broken glass ("bhagar"), without payment of excise duty, after 1st March, 1979. On 25th August, 1980 they were served with a notice to show cause why they should not be required to pay excise duty on such molten and broken glass, having regard to the change in the Entry. The show cause notice was duly made absolute. The matter was ultimately carried by the Revenue to the Central Excise and Gold (Control) Appellate Tribunal. The Tribunal, relying mainly upon the judgment of the High Court at Delhi in the case of Modi Rubber Ltd. Vs. Union of India and Others, , concluded that the molten and broken glass were not goods for the purposes of the levy of excise duty.

3. The Revenue is in appeal and it is contended that the Tribunal when disposing of the present matter, failed to notice its earlier judgment dated 8th February, 1985 in the case of 1991 (36) ECR 452 where it had been held that molten and broken glass were different from the raw materials thereof, namely, silica sand,

soda ash and chemicals; that labour and energy had been employed in bringing about the transformation from the raw materials to the finished products; and that, to persons dealing in such materials, they were known as broken glass and waste glass. The Tribunal found that there was no doubt that broken and molten glass were basically glass and had to be considered to be manufactured items which were regularly bought and sold and which fetched a considerable value. They were, therefore, goods and excisable.

4. Learned Counsel for the assessee drew our attention to the judgment of this Court in *Union of India and others Vs. Indian Aluminium Co. Ltd. and another*, . This was a case which related to aluminium dross and skimming which arose in the process of manufacturing aluminium products out of aluminium ingots. this Court did not accept the contention on behalf of the Revenue that aluminium dross and skimming were goods or marketable commodities which could be subject to the levy of excise duty. They were found to be nothing but waste or rubbish which was thrown up in the course of manufacture. They were, therefore, not excisable goods.

5. It is difficult to see how the aforesaid judgment is of any assistance in the case at hand. The molten and broken glass arises at the stage of final manufacture of glass. Molten and broken glass is saleable, for a considerable value. It has utility, inter alia, in the manufacture of glass itself. It is difficult, in the circumstances, to hold that molten and broken glass fall outside the scope of Clause (4) of Item 23A afore-quoted. They would be exigible to excise duty by reason of the words "other glass" therein.

6. The afore-stated is the only issue which has been agitated in the course of proceedings before this Court and below.

7. The civil appeal is allowed. The judgment and order of the Tribunal under appeal is set aside.

8. No order as to costs.