

(2003) 02 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal No's. 1411 of 1995, 7086 of 1999 and 2366-67 and 4384 of 2001

Forbes Gokak Limited

APPELLANT

Vs

Collector of Central Excise, Aurangabad

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Interpretation of the Schedule of the Excise Tariff Rules — Rule 1, 2, 3, 4

Citation : AIR 2003 SC 1729 : (2003) AIRSCW 1152 : (2003) 86 ECC 8 : (2003) 153 ELT 24 : (2003) 2 JT 276 : (2003) 2 SCALE 450 : (2003) 6 SCC 128 : (2003) 2 SCR 348 : (2003) 2 Supreme 311

Hon'ble Judges : M. B. Shah, J;D. M. Dharmadhikari, J

Bench : Division Bench

Advocate : Raju Ramachandran, Additional Solicitor General, A.M. Setalwad, Y.G. Godrej, D.B. Shroff, Sophia Bawan, Puja Sharma, Rajan Narain, K. Swami, D.N. Ray, Hemant Sharma and B. Krishna Prasad, for appearing partie, for the Appellant;

Final Decision : Disposed Of

Judgement

Shah, J.

CIVIL APPEAL No. 1411 OF 1995.

1. By judgment and order dated 28th October, 1994, in Appeal No. E/139/94-D, Customs Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") arrived at the conclusion that 'Glass Moulds along with plastic Gasket were classifiable under Central Excise Tariff Chapter heading 70.15 as other articles of glass' and thereby confirmed the order passed by the Collector of Central Excise, Aurangabad.

The questions for consideration before the Tribunal were:--

(1) Whether grinding and polishing of Ophthalmic Blanks into Glass Moulds amounts to manufacture?

(2) Whether the goods are known in the market as Glass Moulds?

(3) Whether the goods should be classified under Chapter sub heading 84.80 or under Chapter 70.15 of the Central Excise Tariff?

2. For the first question, the Tribunal came to the conclusion that the produce which comes out after grinding and polishing is product completely different from raw-material namely the ophthalmic blanks. The ground and polished material acquires different characteristic and properties and a new product distinct in name character and use comes into existence after the process of grinding and polishing. Thus, the process of grinding and polishing is nothing but a process of manufacture.

3. For the second question, the Tribunal found that the appellant had described the product as Glass Moulds and that the product was internationally known as Glass Moulds. That means in common/ trade parlance, the product was known as glass moulds. For the contention that the product is not marketable and does not come to the market for being bought and sold on the ground that the technology for manufacture of the product was a highly guarded secret and, therefore, it was not available to trade in general, the Tribunal held that as the product was imported by the appellant itself, it was not necessary that the product should essentially come to the market for being brought and sold in the market. The Tribunal held that the test is --whether the product is capable of being bought and sold in the market or is marketable? For this, the Tribunal relied upon the decision of this Court in U.P. State Electricity Board Vs. Collector of Cus. and C. Ex., .

4. For the last question--whether the goods were moulds for plastic articles or moulds made of glass, the Tribunal relied upon the test of common/trade parlance and observed that the admitted position was that the goods were known in the international market as glass moulds; the appellants who were the manufacturer also call the product as glass moulds; even at the time of import of the product, it was declared as 'glass moulds'. Hence, the Tribunal held that the product was known as 'glass moulds or moulds made of glass'.

5. With regard to classification of the product, the Tribunal pointed out that lot of emphasis was laid on Chapter Note 1(c) of Chapter 84 by the appellant whereas the Department was of the view that the goods were articles for technical use and the plastic gaskets were parts thereof and, therefore, not classifiable under Chapter 84 and were appropriately classifiable under Chapter Heading 70.15. The Tribunal held that the moulds in dispute were glass moulds as known internationally and nationally in trade/commercial parlance. They were not moulds for making plastic articles and therefore, in terms of the Explanatory Notes of HSN, the goods were appropriately classifiable under Central Excise Tariff Heading 70.15.

6. The Tribunal also held that Gaskets are essential components and are used for binding of male and female to form a glass mould assembly and, therefore, were

classified under Central Excise Tariff Chapter heading 70.15 when they were imported along with glass moulds. Gaskets were given specific shape and design for the purpose of preparing these glass moulds assembly and, therefore, shall be classifiable under Central Excise Tariff Heading 39 as articles for plastic and finally held that the glass moulds along with gaskets were classifiable under Heading 70.15.

7. That judgment and order of the Tribunal is challenged by filing this appeal.

8. Admittedly, the Glass Moulds consist of (1) glass moulds; and (2) gaskets. Ground of one glass mould is of concave shape while other is convex. These pieces of ground ophthalmic glass are known as glass moulds in International Trade. A plastic gasket which holds the two Moulds is then manufactured out of ethyl vinyl acetate. The said two moulds are held together by this gasket. This is for manufacturing ophthalmic lenses. Admittedly, the process is as follows:--

(a) In the mould making section, the glass blanks are subjected, first to cutting the surface by diamond to achieve designed curvature on the surface, then these glass blanks are subjected to grinding and polishing to achieve a smooth surface.

(b) Two glass blanks so processed from (called male & female) constitute appliances or articles of glass for use known as glass moulds, these two moulds are held together with plastic gasket which they call a glass mould assembly, such glass moulds are used repeatedly for casting of the plastic lenses.

9. It was contended by the Department that the assesseees were manufacturing glass moulds and gaskets and consuming these products captively for manufacture of ophthalmic lenses and that these glass moulds were classifiable under Central Excise Tariff Chapter heading 70.15. the assessee submitted that the same are classifiable under the heading 84.80 for which there is exemption notification No. 220/86 dated 2.4.1986.

10. For appreciating the contentions raised by the learned counsel for the parties, we would refer to the relevant entries and chapter notes thereunder, upon which reliance is placed by them.

"CHAPTER 70 Glass and Glassware

NOTES--

1. This Chapter does not cover:

(a) - (b)

(c) Optical fibre cables electrical insulators or fittings of insulating material (Chapter 85);

(d) Optical fibres, optically worked optical elements hypodermic syringes, artificial eyes, thermometers, barometers, hydrometers or other articles of Chapter 90.

5. Throughout this Schedule, the expression 'glass' includes fused quartz and other fused silica.

HEADING

Heading 70.15 Other articles of glass including those of a kind used for table, kitchen, office, indoor decoration or similar purposes (other than that of heading No. 70.07 or 70.13)

CHAPTER 84 Nuclear Reactors, Boilers, Machinery and Mechanical Appliances; Parts Thereof

NOTES--

1. This Chapter does not cover:

(a) - (b)

(c) Laboratory glassware (heading No. 70.12); machinery, appliances or other articles for technical uses or parts thereof of glass (heading No. 70.14 or 70.15)

(d) Articles of heading No. 73.21 or 73.22 or similar articles of other base metals (Chapter 74 to 76 or 78 to 81)."

HEADING

Heading 84.80 Moulding boxes for metal foundry; mould bases; moulding patterns; moulds for metal (other than ingot moulds) metal carbides, glass, mineral materials, rubber or plastic.

CHAPTER 90

Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Clocks and Watches; Musical Instruments; Parts and Accessories Thereof.

HEADINGS

Heading 90.01 Optical fibres and optical fibre bundles, optical fibre cables other than those of heading No. 85.44; sheets and plates of polarizing material lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked.

Heading 90.02 Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings, for instruments or apparatus, other than such elements of glass not optically worked."

11. Further, learned counsel for the appellant referred to relevant parts of Rules 1 to 4 of the Rules for Interpretation of the Schedule of the Excise Tariff which are as under:--

THE SCHEDULE-EXCISE TARIFF RULES FOR THE INTERPRETATION OF THIS SCHEDULE

1. The title of Sections and Chapters are provided for case of reference only, for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained.

2. (a) ...

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combination of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3.

3. When by application of Sub-rule (b) of Rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to (sic) only of the items in a set, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components. and goods put up in sets. which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin."

12. Now we would deal with the contention of the learned counsel for the appellant that the glass moulds with plastic gasket manufactured by the appellant would be covered by heading 84.80 and in any case, it would fall under Chapter 90, heading 90.02.

13. For the alternative submission, admittedly, it was neither the contention of the Department nor of the appellant that the product would be covered under heading 90.02 and, therefore, that question is not required to be considered.

However, prima facie, it would be difficult for us to arrive at the conclusion that the product is lense, prism, mirror and other optical element, of any material, unmounted, being part of or fitting for instruments or apparatus, other than such elements of glass not optically worked so as to be covered by Heading 90.02. Admittedly, the product in question is for manufacture of lenses.

14. Hence, we would straightway consider whether the product would be covered by heading 84.80? Chapter Note 1(c) quoted above clearly provides that Chapter 84 does not cover laboratory glassware (Heading No. 70.12); machinery appliances or other articles for technical uses or parts thereof of glass (Heading No. 70.14 or 70.15). therefore, we have to consider--whether it would be covered by heading 70.15? Undisputedly, in the present case, the glass moulds are articles of glass which are not covered by heading 70.07 or 70.13. The glass moulds in question are covered by plastic gasket. As per the Rules for Interpretation of Tariff Items, a product which is made up of different components and goods put up in sets, which cannot be classified by reference to Rule (2), are to be classified as if they consisted of the material or component which gives them their essential character. In the present case, plastic gasket cannot give the essential character of glass moulds which are for the purpose of manufacture of ophthalmic lenses. Plastic gasket only holds the male and female moulds together.

15. Further, relevant part of heading 84.80 deals with moulds for metal, metal carbides, glass, mineral materials, rubber or plastics. Reading the said heading as a whole, it appears that the said heading covers various moulds such as, mould boxes for metal foundry, mould bases, moulding patterns, moulds for metal, moulds for metal carbides, moulds for glass, moulds for mineral materials, moulds for rubber or plastics. It is nobody's case that the product in question, namely, 'glass mould' is used for the aforesaid purposes. It is used for manufacture of ophthalmic lenses. Merely because lenses may be of glass, it cannot be said that the said product is mould for glass. As per Rule 3(a) of the Rules for the Interpretation quoted above, the heading which provides most specific description shall be preferred to headings providing a more general description. The heading 70.15 would specifically cover the product which is mainly consisting of glass as 'other article of glass'. These glass-moulds are used for casting of the lenses.

16. Aforesaid discussion is also in conformity with the HSN explanatory notes. In Chapter 70 for Glass and Glassware, the general not specifically provides that the Chapter covers glass in all forms and articles of glass, other than goods excluded by Note-1 to the said chapter or covered more specifically by other headings of the nomenclature. Learned counsel for the appellant submitted that the chapter note 1(d) specifically includes optical fibres, optically worked optical elements, hypodermic syringes, artificial eyes, thermometers, barometers, hydrometers or other articles of Chapter 90. As stated above, the glass moulds cannot be termed as optical fibres or optically worked optical elements, which would be covered by

Chapter 90. It also provides that manufacturing processes vary considerably and inter alia include:--

(D) Moulding, whether or not combined with pressing, blowing or drawing (e.g., for the manufacture of bottles, tumblers, certain types of optical glass, ashtrays).

(IJ) Cutting out the required articles from blanks, spheres, etc., obtained by any process (articles of fused quartz or other fused silica, in particular, are often obtained from blanks of solid or hollow section).

17. This has been made clear in Chapter/Heading 90, the relevant part of which reads as under:--

"(C) Optical elements of glass, optically worked, not permanently mounted. In order to distinguish between optical elements of glass of this heading and those of Chapter 70 it is necessary to determine whether or not they have been optically worked.

The optical working of glass is usually performed in two stages, viz., the production of the surfaces to the shape required (i.e., with the necessary curvature, at the correct angle, etc.), and the polishing of these surfaces. This working consists of grinding the surfaces by means of abrasives, rough at first, then gradually finer, the successive operations being roughing, truing, smoothing and polishing. Finally, in the case of lenses required to be of an exact diameter, the edges are ground; this is known as the centring and edging operation. This heading applies only to optical elements of which the whole or part of their surface has been polished in order to produce the required optical properties. It applies therefore to elements which have been ground and polished as described above, and also to elements which have been polished after moulding. The heading does not apply to unpolished elements having undergone merely one or more of the processes which precede polishing. Such elements fall in Chapter 70."

18. Further, as stated above, it is nobody's case that item in question is covered by Chapter 90.

19. Further, with regard to the applicability of Chapter 84, Chapter Notes to Chapter 84 provide as under:--

"Chapter 84 NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL APPLIANCES; PARTS THEREOF

Chapter Notes

1. This chapter does not cover:

(c) Laboratory glassware (heading No. 70.17); machinery, appliances or other articles for technical uses or parts thereof, of glass (heading No. 70.19 or 70.20);

GENERAL

(A) GENERAL CONTENT OF THE CHAPTER

Subject to the provisions of the General Explanatory Note of Section XVI, this Chapter covers all machinery and mechanical appliances, and parts thereof, not more specifically covered by Chapter 85, and not being:

(a)--(c)...

(d) Laboratory glassware of heading 70.17; machinery and appliances and parts thereof, of glass (heading 70.19 or 70.20).

In general, Chapter 84 covers machinery and mechanical apparatus and Chapter 85 electrical goods. However, certain machines are specified in headings of Chapter 85 (e.g. electro-mechanical hand tools and electro-mechanical domestic appliances) while Chapter 84 on the other hand covers certain non-mechanical apparatus (e.g., steam generating boilers and their auxiliary apparatus, and filtering apparatus).

It should also be noted that machinery and apparatus of a kind covered by Chapter 84 remain in this Chapter even if electric:

Since ceramic articles and parts thereof (Chapter 69), laboratory glassware (heading 70.17) and machinery and appliances and parts thereof, of glass (heading 70.19 or 70.20) are excluded from this Chapter, it follows that even if a machine or mechanical appliance is covered, because of its description or nature, by a heading of this Chapter it is not to be classified therein if it has the character of an article of ceramic materials or of glass.

(B) GENERAL ARRANGEMENT OF THE CHAPTER

(5) Heading 84.80 covers, in addition to moulding boxes for metal foundry and moulding patterns, moulds (other than ingot moulds) used, by hand or in machines, for moulding certain materials.

8480.50 - Moulds for glass 8480.60 - Moulds for mineral materials - Moulds for rubber or plastics: This heading covers the moulding boxes used in metal foundry, mould bases and moulding patterns, with certain exceptions referred to later, it also covers all moulds (whether or not hinged, and whether used by hand or in presses or moulding machines) which are of a kind used for moulding the following materials into blanks or finished articles:

(I) Metals (including metal powders, sintered metal carbides and cermets.

(II) Glass (including fused quartz or other fused silica) or mineral materials such as ceramic pastes, cement, plaster or concrete.

(III) Rubber or plastics.

In general, the essential function of a mould is to retain the material in a predetermined shape while it sets; some moulds also exert a certain pressure on the material. But the heading excludes stamping dies of heading 82.07 since

these shape the material solely by means of a powerful blow or compression (e.g., dies for stamping out sheet-metal goods).

MOULDS FOR GLASS

This group includes:--

- (1) Moulds for glass paving stones, bricks or flags, and compression moulds for glass tiles.
- (2) Bottle moulds for hand or machine working, including pedal operated moulds (e.g., blank or finishing moulds, ring moulds).
- (3) Moulds for hollow glass ware, for insulators, etc.
- (4) Shaping moulds for glassmakers lathes.
- (5) Moulds made of steel or cast iron, used to make lens or spectacle blanks etc."

20. Reading the aforesaid notes, it would be difficult to hold that glass-moulds in question are moulds for glass. It is apparent that Chapter 34 covers machinery and mechanical apparatus and certain non-mechanical apparatus e.g. steam generating boilers and their auxiliary apparatus and filtering apparatus. Further, the Chapter excludes ceramic articles and parts thereof, laboratory glassware, machinery and appliances and parts thereof, of glass, that means even if a machine or mechanical appliance is covered by a heading of Chapter 84 by its description or nature, the item is not to be classified therein if it has the character of an article of ceramic material or of glass.

21. Further, heading 84.80 covers moulds used by hand or in machines for moulding certain materials like moulds for glass, moulds for mineral materials and moulds for rubber or plastics. The product in question--'glass mould' is not for moulding such articles of glass. Moulds for glass include--moulds for glass paving stones, bricks or flags, compression moulds for glass tiles, bottle moulds for hand or machine working, moulds for hollow glassware and for insulators, shaping moulds for glassmakers' lathes and moulds made of steel or cast iron used to make lens or spectacle blanks.

22. In the result, civil Appeal No. 1411 of 1995 and civil Appeal No. 7086 of 1999, filed by the appellant - Forbes Gokak Ltd. are dismissed.

23. civil Appeal Nos. 2366-67 of 2001 filed by Commissioner of Central Excise, Mumbai is allowed and the impugned judgment and order passed by the Tribunal is set aside.

24. As nothing has been pointed out as to how the impugned judgment and order is erroneous, civil Appeal No. 4384 of 2001 filed by Commissioner of Central Excise and Customs, Aurangabad is dismissed.

25. There shall be no order as to costs in all the appeals.