
(1989) 05 CAL CK 0032
In the Calcutta High Court
Case No : Civil Rule No. 57 (W) of 1982

Hindusthan Safety Glass Works Limited	APPELLANT
Vs	
Central Board of Excise and Customs and Others	RESPONDENT

Date of Decision : 12-05-1989

Acts Referred:

Citation : (1990) 1 CALLT 365 : (1990) 29 ECC 24 : (1990) 45 ELT 66

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Sanjoy Bhattacharyya, Chandrima Bhattacharya and Pratul Krishna Chatterjee, for the Appellant; P.K. Bose, M.Q. Kabir and Prankrishna Chatterjee, for the Respondent

Judgement

Susanta Chatterji, J.—The present writ petition filed by Hindusthan Safety Glass Works Limited prayed for, inter alia, issuing of a Writ of Mandamus commanding the respondents not to levy any duty of excise on broken glass cullets arising in the process at the petitioner's factory under Item 23A of the First Schedule of the Act being Central Excises & Salt Act, 1944 and to withdraw, cancel and/or rescind the order bearing No. 39 IB dated July 18, 1981 and the purported Tariff Advice Bearing No. 76/81 dated August 4, 1981 of the Central Board of Excise and Customs and the purported order bearing No. V-23A(3)2-AC/81 dated November 20, 1981 of the Assistant Collector of Central Excise, Calcutta-x Division and to refund the amount realised as alleged duty of excise on such broken glass/cullets and to, further, act in accordance with law, and for other consequential reliefs as fully stated in the writ petition itself. ;

2. It is alleged that in course of making and/or producing toughened glass, laminated glass and mirrors, glass being brittle and fragile by nature, breakage occurs at various stages. Such broken glass/waste is otherwise known as cullets which can only be used after remelting for the manufacture of glass and glassware. It is also alleged that such broken glass/cullets is a waste product and nothing but scrap and is not "goods" within the meaning of the said Central

Excise & Salt Act, 1944 (hereinafter referred to as the said Act, 1944) and/or otherwise and cannot be ordinarily bought and sold in the market as finished manufactured goods. The broken glass/cullets not being goods cannot be said to be subjected to any duty of excise. It is further alleged that u/s 3 of the said Act, 1944, duty of excise is leviable only on the manufacture of goods. The duty under said Act is not leviable on scraps or waste materials unless specified in the First Schedule of the said Act, 1944.

3. Stating in details all the above facts, the writ petition has been filed and a Rule was issued on February 9, 1982. The writ petitioner has come to this Court on the ground that the duty of excise u/s 3 of the said Act, 1944 can only be levied on the manufacture of goods and "manufacture" within the meaning of Section 2(f) of the Act implies a change in the raw materials but every change is not manufacture. It is asserted that the thrust of the manufacturing process must be the production of a finished excisable goods. Broken glass cannot be considered as finished excisable goods and it does not ordinarily come to the market to be brought and/or sold.

4. Mr. Bhattacharya, learned Advocate appearing for the petitioner has argued at length that it will be evident from the Scheme of the said Act, 1944 that when the Legislature intended to cover waste and scrap within the ambit of the items mentioned in the First Schedule to the Act, it has specifically provided for that as would be evident from Items 26, 26A, 26B, 27 and 27A of the First Schedule of the said Act, 1944. The decision contained in the purported order and the Tariff Advice of the Central Board of Excise and/or order of the Assistant Collector is without any basis and illegal and is contrary to the Scheme of the Act. The broken glass arising in the process at the petitioner's factory cannot be said to have been manufactured by the petitioner as finished excisable goods. He has laid much emphasis upon the fact that the broken glass is waste materials and excise duty cannot be levied under Tariff Item 23A of the First Schedule to the Act, 1944 or under any of the Items of the First Schedule to the said Act. He has developed his arguments by drawing the attention of the Court that Item No. 23A of the First Schedule of the Act makes excisable the manufactured glass and glassware. He draws attention of the Court that Sub-Item (4) of Item 23A of the First Schedule to the said Act covers those manufactured glass and glassware which are not specified against sub-items (1), (2) and (3) of the Item 23A of the First Schedule to the said Act, 1944. Broken glass arising in the process and/or during handling and storage cannot be considered as manufactured glass and cannot be so classified under item 23A(4) of the First Schedule to the said Act.

5. The writ petition and the Rule are contested by the respondents authorities by filing affidavit. The petitioner has also filed an affidavit-in-reply and a supplementary affidavit placing on record certain relevant facts and also by reiterating the stand taken in the main writ petition.

6. It appears from the affidavit-in-opposition filed by the contesting respondents that the petitioner Company carries on its business of manufacturing glass

mirrors, laminated safety glass, toughened glass, flat and curved safety glass, wind screens, door screens and back screens out of toughened glass out of flat sheet glass. Goods manufactured by the petitioner company can be classified under Tariff Item No. 23A (4) of Central Excise Tariff and allowed relief of duty on raw materials, i.e. flat glass purchased from the market under proforma credit system under Rule 56A in accordance with the Government of India Notification No. 196/79 dated 31-5-79. It is also stated in the said affidavit-in-opposition that the petitioner company was availing of the proforma credit system under Rule 56A of the raw materials and clearing the principal products under sub-item 4 of the Tariff Item No. 23A of Central Excise Tariff. It is asserted in the said affidavit-in-opposition that in the process of manufacture of principal products broken glass/cullets are derived out of the materials of, i.e., flat sheet glass against which proforma credits were available earlier under Rule 56A, and the petitioner Company cleared such broken glass/cullets without payment of Central Excise duty as waste and without giving any information to the Central Excise Department. Hence, an offence case was booked against the petitioner Company for violation of Rule 56A(3)(iv)(a). The petitioner company then submitted a classification list in Form I claiming such cullets/broken glass as non-excisable goods, i.e. waste material.

7. Mr. P. K. Bose, Learned Advocate appearing with Mr. M. Q. Kabir and Mr. Prankrishna Mukherjee, Advocates have argued that the petitioner Company moved a writ petition earlier to this Hon'ble Court for classifying their principal products under Tariff Item 68 instead of Tariff Item 23A(4) and obtained an interim order on April 23, 1980 to the effect that the petitioner will go on paying excise duty at the rate of 8 per cent ad valorem on the goods produced by it and clear the same on execution of a Bond in Form B-13 in favour of the appropriate officer for provisional assessment under Tariff Item 68 as amended on 28-6-80. The petitioner company, according to the respondents, have since been clearing the products both under Tariff Item 23A(4) and under Tariff Item 68 on execution of a Bond in Form B-13 to cover the differential duty on broken glass at 35% ad valorem under Tariff Item No. 68. It is further brought to the notice of the Court that the petitioner Company is bringing new raw materials, i.e. flat glass, both sheet and plate quality under proforma credit system under Rules 56A for the goods to be cleared under Tariff Item 23A(4) and with? out proforma credit system for the goods to be cleared under Tariff Item 68 where the proforma credit system is not admissible. In the process of manufacturing principal products- in both the cases broken glass/cullets are derived as new products. The petitioner company submitted classification list both for such broken glass/cullets in Form I to classify them as non excisable product being waste material.

8. It is further submitted by the respondents that the Central Excise authorities did not accept the contention of the petitioner Company that cullets/broken glass are not "glass", as these come under the term "other glass" and are classifiable under Tariff Item 23A(4) of the Central Excise Tariff since March 1, 1979 and such cullets/broken glass had never been declared as waste product of glass. The

Collector of Central Excise decided the case concerned as an offence under the Central Excise Act and Rules thereto and confirmed the claim for duty for such clearance. According to the respondents, the acts done and/or caused to be. have been done by the respondents authorities are well justified as per the provisions of law.

9. Having heard Mr. Bhattacharya, Learned Advocate for the petitioner and Mr. Bose, learned Advocate for the respondents at length, this Court finds that before the Customs, Excise and Gold (Control) Appellate Tribunal "Waste" has been considered in a case reported in 1988 (18) ECR 554 (Indian Tube Co. Ltd. v. Collector of Central Excise). It will appear therefrom that in its capacity as a waste product, spent sulphuric acid is not liable to duty as it has no independent market by itself. Diluted sulphuric acid is used by the said Indian Tube Co. Ltd. for the process of pickling steel pipes, tubes and strips for removal of scale formation. Once its efficacy is reduced, this is of no further use to the said company and such sulphuric acid supplied free to Mps Cynamides and Pigments is not excisable. The fact remains that this waste pickle liquor has not independent market..... the goods in issue (waste pickle liquor) is not in the nature of a valuable by-product arising during the course of manufacture of some other goods it is in the nature of a waste product after losing its efficiency.

10. The question that has arisen before this Court is to find out as to whether the broken glass/cullets are to be considered as waste and whether those come under the mischief of payment of excise duty. It is needless to observe that in respect of various items of products and/or by products of the manufactured items, there is mention of waste of such items covered by Tariff Schedule. It is to be considered whether those broken glass/cullets known as Bhagar are covered by Tariff Schedule or that they are subjected to excise levy or not. The attention of this Court has been drawn to several decisions of the Customs Excise and Gold (Control) Appellate Tribunal and other Courts as to the decision of waste and to the demand for excise levy of such waste. It will appear from 1988(14) ECR 688 (Kusum Products v. Collector of Central Excise, Calcutta) that spent nickel catalyst is not a manufactured item and therefore not excisable. This position has been made very clear in a very recent judgment of the Hon"ble Supreme Court reported in 1988(14) ECR 353 (Mukesh Kumar Aggarwal & Co. v. State of Madhya Pradesh and Ors.). It was found therein that the interpretation of the words of a taxing statute must be based on popular usage. In a Taxing Statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance. It was also found that in common parlance, remnants of wood sold after removing the substantial parts are not described as "timber", hence they do not come under the purview of Section 32A of Part II of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958. Reference also may be made to the reported decision in 1988 (16) ECR 115 (Collector of Central Excise, Bombay v. Kiran Spinning Mills, Thane) wherein the apex Court of this country found that

straightening and cutting of the running lengths of man-made fibre into shorter lengths is not "manufacture" under the Central Excise law as no new substance is brought into existence.

Considering the ratio of the above decisions, it appears before this Court that two questions are to be determined, namely,

(a) Whether the broken glass/cullets are to be deemed as manufactured items excisable under the Central Excises & Customs Act, 1944 ; and

(b) Whether the petitioner company is liable to meet the demand for the waste materials known as broken glass/cullets and/or Bhagars.

11. After thoroughly scrutinising the pleadings of the parties and looking to the provisions of law, this Court is of the view that in the process of manufacture of several classes of items, the broken glass/cullets and/or Bhagars cannot be construed as items "manufactured" or can be construed as any by-product or having any character of marketability and thus cannot be liable to be levied, under the provisions of Excise & Customs Act. Secondly, this Court is of the view that such waste arising out of manufacturing the non-items are not clearly stated in the Tariff Items and there cannot be any demand of excise duty upon such waste materials or items by drawing the analogy within the meaning of "other glass".

12. With regard to the benefits under Rule 56A obtained by the petitioner as claimed by the respondents, it has been placed that the case of the respondents is that since proforma credit of Central Excise duty paid on the raw materials used in the manufacture of the finished goods has been taken by the writ petitioner, then broken glass/cullets arising in course of the manufacture of the finished products cannot be removed without the payment of duty as that would be violative of Rule 56A(3)(iv)(a) of the Central Excise Rules, 1944. The finished goods of the petitioner, namely, screens and mirrors were being assessed under Tariff Item No. 23A of the First Schedule to the Central Excises and Salt Act, 1944 although the petitioner was all through contending that the same should be assessed under Tariff Item No. 68 because in popular parlance screens and mirrors of the buses, trains and ships etc. were and are never known as glasses. Be that as it may, the Hon'ble Supreme Court has been pleased to accept the contention on the petitioner by holding that the finished goods of the petitioner mirror and screens are liable to be assessed under Tariff Item No. 68 and not otherwise, and hence the proforma credit taken on the raw materials are not allowable under Rule 56A(2)(ii) of the said Rules. Credit of duty paid under one Tariff on raw materials is not available towards the payment of duty on the finished goods assessable under another Tariff Item. Further, duty paid so long under Tariff Item No. 23A(iv) on the finished goods of the petitioner became refundable to the petitioner at once because the difference of duty paid under Tariff Item No. 23A(iv) and those payable under Tariff Item No. 68 is of 35%-8% = 27% with the result that a huge sum became refundable to the petitioner.

Petitioner further avers that consequent upon the judgment of the Hon'ble Supreme Court as mentioned above in the case of the petitioner in T.C. Nos. 349, 350 and 355 of 1983, the writ petitions were allowed and consequently filed the application for refund of Central Excise duty paid in excess of the legitimate dues in respect of products other than mirror after deducting the entire proforma credit taken by the petitioner from August 1979 to February 1985. On such application, a part payment of Rs. 36 lacs approximately has been paid as stated by the petitioner, on or about 19.4.89. Such fact has been brought to the notice of the Court as a subsequent event by filing a Supplementary Affidavit for which leave was granted and the same was filed in course of the delivery of the judgment. Such facts in the said supplementary affidavit have not been controverted by the respondents.

13. Considering all the materials in the proper perspective, this Court is clearly of the view that the broken glass/cullets occurring in course of manufacturing of the finished goods by the petitioner company are not coming within the mischief of excise duty. Those broken glass/cullets and/ or waste materials are not such by-products having any marketability and those are not subject to be levied towards excise duty. The impugned orders as challenged by the writ petitioner suffer from inherent defects and the decision based upon the fact that broken glass/cullets may be construed within the Tariff Item No. 23A(iv) as covered by the expression "other class is not correct.

14. It is, however, argued with force by referring to the decisions reported in AIR 1961 SC 1056 (Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.) and M. Naina Mohammed Vs. K.A. Natarajan and Others, that the writ petition itself is not maintainable as alternative remedies are available to the writ petitioner. This Court has considered this aspect of the matter and finds that while the writ petition was entertained as back as in 1982 and which is pending for a long time, it will be futile to send the petitioner company to seek alternative remedies without adjudicating the matter in dispute when the case has been heard fully on its merit by examining all the related questions. In this connection, reference has been made to several decisions of this Court clearly laying down that while the writ petition was entertained and the matter was kept pending for long years and substantial question therein can be decided by writ Court, it will not be proper to direct the party to seek remedy else where by way of alternative remedies and the doors of the Writ Court should not be closed. On the basis of the materials as disclosed before this Court and by interpreting the provisions of law, this Court finds that it would not be just and prudent to refuse relief to the petitioner company as because the petitioner company is entitled to such reliefs in the alternative forum.

15. For the foregoing reasons, the writ petition is allowed and the Rule is made absolute. The impugned orders as challenged in the writ petition are quashed. There will be a Writ of Mandamus issued commanding the respondents not to levy any duty of excise on the broken glass/cullets arising in the process at the

petitioner's factory under Tariff Item No. 23A or under any of the items to the First Schedule of the said Act and to withdraw, cancel and/or rescind the said purported order bearing No. 76/81 dated August 4, 1981 of the Central Excise and Customs Board and the purported order bearing No. V-23A(3)2-AC/81 dated November 20, 1981 of the Assistant Collector of Central Excise, Calcutta-X Division.

16. It is, however, made clear that the petitioner company may file an appropriate application for refund, if any, and the same would be considered by the respondents authorities notwithstanding any question of limitation in that regard.

17. There will be no order as to costs. All other orders are vacated, The petitioner is at liberty to withdraw any Bank Guarantee in this matter.