

(1991) 12 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 2703 of 1983

J.G. Glass Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-12-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2, 35A(2), 4

Citation : (1993) ECR 76 : (1992) 62 ELT 291

Hon'ble Judges : N.D. Vyas, J; M.L. Pendse, J

Bench : Division Bench

Advocate : Mr. Arshad Hidayatullah, Mr. B.P. Shah and Mrs. F. Sampat, instructed by M/s. Manilal Kher Ambalal and Co, for the Appellant; Mr. R.V. Desai and Mr. P.N. Menon, for the Respondent

Judgement

Pendse, J.—The petitioners are manufacturers of glass and glassware's and which manufacture is liable to excise duty under Tariff Item No. 23A. Tariff Item No. 23A deals with the subject of glass and glassware and Clause (4) provides that excise duty on "other glass and glassware including tableware" is thirty five per cent ad valorem. The petitioners had entered into an agreement to manufacture bottles for a company and the agreement provided that the petitioners, on manufacture of the bottles, shall print a logo of the customer on the bottles. The petitioners were required by Messrs. Poona Beverages Limited to supply 200 ml. Campa bottles to enable the beverage company to sell beverages in the said bottles. The petitioners filed price list No. 37 dated April 4, 1978 for supply of Campa bottles inclusive of the printing charges. The price list sets out that the manufacturing cost would be Rs. 700/- and printing charges Rs. 200/- and consequently the total charges Rs. 900/- per 1000 bottles. The petitioners also informed the Superintendent of Central Excise that the printing charges should not be included in the assessable value while determining the duty payable by the petitioners. The Assistant Collector approved the price list on October 7, 1980 and accepted the claim of the petitioners that the cost of the printing need not be included while determining the assessable value.

2. Pursuant to the approval given by the Assistant Collector to the price list, the petitioners filed refund application on May 7, 1981 seeking refund of Rs. 7,68,776/- for the period commencing from April 5, 1978 and ending with November 26, 1980. The Assistant Collector, Pune Division, by order dated October 31, 1981, sanctioned refund of Rs. 3,93,671.82 by cheque and directed that an amount of Rs. 1,02,478.94 should be set off against the pending dues of the petitioners. The Assistant Collector also held that the remaining amount is not refundable as the petitioners had recovered the said duty from the customers.

3. On April 24, 1982, the Collector of Central Excise and Customs, Pune, served a show cause notice on the petitioners to explain why the order granting refund should not be reviewed in exercise of powers u/s 35A(2) of the Central Excise Act and the order granting refund should not be quashed. The petitioners filed a reply and thereafter the Collector passed the impugned order dated July 7, 1983 whereby the show cause notice was made absolute and the order of refund granted earlier by the Assistant Collector on October 31, 1981 was set aside. The Collector of Central Excise came to the conclusion that the value for assessment of the glass bottles has to be inclusive of the cost of printing. The order of the Collector is under challenge.

4. Mr. Hidaytullah, learned counsel appearing on behalf of the petitioners, submitted that the Collector misdirected himself while exercising powers of review u/s 35A(2) and the conclusion that the cost of the printing shall be included while determining the assessable value of the glass bottles under Tariff Item No. 23A(4) is erroneous. The learned counsel urged that the Collector declined to address to the issue which requires to be determined for ascertaining the assessable value. The petitioners had claimed before the Collector that the process of manufacture of glass bottles is complete and the taxable event occurs before the work of printing logo is undertaken. The Collector in the impugned order observed that it is not necessary to examine whether the process of manufacture of glass bottles is complete before undertaking the process of printing. The Collector also observed that it is not necessary to examine whether by process of printing a different article as understood in the market had come into existence. In our judgment, the approach of the Collector is clearly erroneous. The Collector proceeded to quash the order of refund passed by Assistant Collector solely on the ground that the petitioners had entered into an agreement with Messrs. Poona Beverage Company for supply of bottles after printing logo and as the work of manufacturing the bottles and printing is carried out in the factory of the petitioners, the assessable value has to be determined by taking into consideration the value of printing. According to the Collector, Section 4 of the Central Excise Act requires that the assessable value should be determined as the value of the article which leaves the factory gate and the value of the glass bottle was increased after process of printing while leaving the factory gate.

5. It is not possible to sustain the view taken by the Collector while holding that

the cost of printing shall be included while determining the assessable value of the glass bottles. The excise duty being on the process of manufacture, it can hardly be debated that the taxable event occurred when the manufacture of glass bottles was completed. Mr. Desai, learned counsel appearing on behalf of the Department, could not dispute that by process of printing logo on these bottles the identity of the bottles is not changed. Mr. Desai submitted that value of the bottle stands increased by process of printing. But it is not possible to accede to the submission on the facts and circumstances of the case. The process of printing logo is undertaken for the purpose of identification and we are unable to appreciate how by any stretch of imagination it will increase the value of the bottle. Indeed, every manufacturer undertakes the process of either printing logo or the name of the customer when an order is booked for a large number of articles to be manufactured. For illustration, several companies distribute gift articles like money purses, fountain pens, diaries etc. and on manufacture of these articles the name of the company is printed and this process of printing is done only for the purpose of identification and by no stretch of imagination improves the value of the article. In our judgment, as the identity of the article, that is, the glass bottle, is not altered by process of printing logo or the value of the glass bottle is not increased or the glass bottle is not an improved article by the process of printing, it is futile to suggest that the cost of printing logo should be included while determining assessable value of glass bottles.

6. Mr. Desai relied upon the decision of the Supreme Court in *Union of India and Others v. Bombay Tyre International Ltd.* 1983 (14) E.L.T. 1896, and especially on the observations made in paragraph 49. The Supreme Court observed that for the purpose of determining the value, broadly speaking, both old Section 4(a) and the new Section 4(1)(a) speak of the price for sale in the course of wholesale trade of the article for delivery at the time and place of removal, namely, the factory gate. The sale price of an article is related to its value and into that value several components including those which have enriched its value and given the article its marketability in the trade are required to be included. We fail to appreciate how these observations would assist the Department in sustaining the impugned order. The marketability of the article does not depend upon the printing of the logo of the customer. As mentioned hereinabove, the bottles could easily be sold in market and the logo is printed only for the purpose of identity of the customer. Mr. Desai also referred to the decision of the Supreme Court in *Empire Industries Limited and Others Vs. Union of India and Others*, . The decision of the Supreme Court has no relevance to the facts of the present case because in the case before the Supreme Court the identity of the article was entirely changed and a new article had come into existence after the process of bleaching, dyeing and printing was undertaken. The process of bleaching, dyeing and printing was carried out on grey fabrics to bring into existence sarees which can be sold in market. It is not permissible to apply the principle which was laid down by the Supreme Court on the set of facts where admittedly a different

article with a distinct identity came into existence by the process undertaken. In the present case, in our judgment, the process of printing has not brought into existence a different article with a distinct identity nor the process has increased or improved the value of the article. In these circumstances, the Collector was clearly in error in disturbing the order passed by the Assistant Collector and concluding that while determining the assessable value of glass bottles the cost of printing should be included. The order of the Collector is not sustainable and is required to be set aside.

7. Mr. Desai submitted that the order of the Collector should not be disturbed in exercise of writ jurisdiction as the petitioners had an efficacious alternate remedy of filing an appeal. We are not prepared to accede to the submission of Mr. Desai that the petitioners should be driven to commence a fresh bout of litigation for more than one reason. In the first instance, the present petition is pending in this Court for the last over seven years and it would be extremely harsh and unjust to compel the petitioners to adopt remedy of filing an appeal by incurring large expenses. Secondly, the decision of the Collector is entirely unsustainable on the facts and circumstances of the case and there is no dispute whatsoever about the facts on which the decision is to be resisted. In these circumstances, we decline to accede to the preliminary objection raised by Mr. Desai.

8. Accordingly, petition succeeds and the impugned order dated July 7, 1983 passed by Collector of Central Excise and Customs, Pune, and a copy of which is annexed as Exhibit "A" to the petition, is set aside. We wish to make it clear that we are not expressing any opinion about the claim rejected by the Assistant Collector by order dated October 31, 1981 as appeal filed by the petitioners against the refusal of part of the claim of refund is still pending. In the circumstances of the case, there will be no order as to costs.

The bond executed by the petitioners in accordance with the interim orders passed by this Court stands discharged.