
(1978) 11 BOM CK 0017

In the Bombay High Court

Case No : Miscellaneous Petition No. 955 of 1973

Techni-glass Limited

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-11-1978

Acts Referred:

Citation : (1990) 29 ECR 539 : (1981) 8 ELT 147

Hon'ble Judges : S.K. Desai, J

Bench : Single Bench

Advocate : A.J. Rana and S.N. Parikh, Daphtary Ferreira and instructed by Divan, for the Appellant; F.H.J. Taleyarkhan and S.G. Shah, for the Respondent

Judgement

1. At all times material for purposes of this miscellaneous petition, the petitioners company were manufacturing a product to which they gave the name "Cell-O-Therm". This was a thermal insulation product which could be cut and shaped in various forms to serve various insulating needs. It is manufactured from broken glass which is powdered and then mixed with certain chemicals such as carbon black, and flamed in electric furnace and annealed in an "annealing lelu". After these processes we have the final product to which the petitioners gave the trade name of "Cell-O-Therm." A brick or block of this product has been produced in Court and a block of light, rough, opaque, grey black material is observed. The question involved in this petition is whether this material going by the trade mark is "glass" or "glassware" for purposes of excise duty. The petitioners' contention throughout their dispute with the excise authorities has been that their product can never be classified as "glass" or "glassware", but the petitioners have not succeeded in establishing their contention before the Assistant Collector of Central Excise and thereafter in appeal before the Collector of Central Excise and finally in revision before the Joint Secretary to the Government of India. It is thereafter that they have moved the Court contending that the approach and the conclusions to be found in these three orders are perverse and cannot and ought not to be sustained by a Court of Law. It is these grievances and contentions of

the petitioners which require investigation.

2. The excisability of the article is claimed by the Excise authorities under Item 23A(4) of the first Schedule to the Central Excises and Salt Act, 1944; the entire item may be set out and it reads as under :

A perusal of this Item indicates that two types of glass mentioned in sub-item (1) are made excisable as glass and the remaining three sub-items provide for levy of duty at different rates for glassware. Sheet glass, plate glass, glass shells, glass globes and chimneys for lamps and lanterns attract an excise duty of 10 %, under sub-items (1) and (3), laboratory glassware attract an excise duty of 5 % under sub-item (2) and other glassware including tableware, which is the residuary sub-item (4) attracts an excise duty of 15 %. The Assistant Collector in his order, after considering the various contentions, held that the product manufactured by the petitioners viz. Cell-O-Therm was covered by both "glass" and "glassware". He, therefore, held that the product was liable to Central Excise duty under Tariff Item 23A(4). The aggrieved petitioners preferred an appeal to the Collector of Central Excise who after setting out the respective contentions, observed that all these have been considered by the Assistant Collector. No fresh grounds, according to the Collector, had been raised before him (the Collector) and in the circumstances he confirmed the order of the Assistant Collector. As the matter will be decided fully in this Court on the materials submitted by the parties, it is unnecessary to make detailed observations on these orders, but it becomes necessary to observe that the learned Collector of Central Excise exercising his appellate jurisdiction has passed the order in a manner that does not inspire any confidence in his appellate powers. On the other hand, the manner in which the order is made casts grave doubt on his capacity to understand the nature of the appellate functions he performs. The revisional order by the learned Joint Secretary is not as vulnerable as the order of the Collector, but even then many of the observations made in the said order are startling and do not reveal care and caution which should be revealed by such high functionaries exercising revisional powers in a serious manner.

3. As stated earlier, the matter has been fully argued before me and all the points which were canvassed before these authorities have again been canvassed before me. Accordingly, since the rival arguments will be set out and discussed it is futile to deal with all these three orders. The latter two of which can be called very unsatisfactory.

4. The learned Counsel appearing on behalf of the Respondents, submitted that the product manufactured by the petitioners could be properly regarded as a special type of glass and since that product could assume and did assume various shapes and could be made in sheets, rolls, tubes and several other shapes as are indicated in the trade brochure shown to the Court the final product could be regarded as "glassware" and would attract excise duty under Item 23A(4). At first glance the submission appears unusual, if not startling, but a closer investigation in many a disputed question may serve to remove

erroneous first impressions and that has been the purpose of the learned Counsel for the respondents.

5. In ordinary parlance "glass" represents and conjures picture of a transparent, lustrous, hard, and brittle substance produced by fusing sand (silica) with soda or potash (or both), usually with the addition of lime, alumine, or lead oxide, "Glassware" in ordinary parlance means articles or items made of such brittle, lustrous and transparent substance.

6. The word "glassware" has come up for consideration before the Courts in several case particularly in connection with the levy of sales-tax and normally the Courts have accepted and are inclined to give to the said term the widest amplitude covering within its ambit all items made of glass. This has been principally based on the dictionary meaning of the term "glassware". In *Tribuwandas Gulabchand and Brothers, Nagpur Vs. The State of Maharashtra*, 16, S.T.R. 452, the Nagpur Bench of this Court was required to consider the term "glassware" in Entry No. 15 of Schedule I, Part X to the C.P. and Berar Sales Tax Act. It held that the term would include glass sheets. It had been contended before that Court that in trade parlance "glassware" would not include glass sheets and Counsel had placed reliance on the classification of various articles in Indian Trade Classification for the year 1956 and in the rate book published in connection with the Import Trade Control Orders. The Court, however, observed that this was matter of evidence and necessary evidence had not been brought on record. On that footing the argument was thwarted and the term "glassware" given an enlarged meaning as including even sheets of glass or glass pates. The Court also relied upon decisions of other High Courts to come to the conclusion that the term or expression "glassware" was wide enough to include all articles made of glass. Accordingly, the Sales Tax Reference was answered against the assessee and in favour of the Revenue. *Haji Jameluddin v. The State*. 6 S.T.C. 141, was a decision given by the Division Bench of the Nagpur High Court in which it was held that glass bangles can be considered as glassware within the meaning of Entry No. 15 in Part I of the amended Schedule I to the C.P. and Berar Sales Tax Act, 1947. The Court quoted with approval the observations of Lord Coleridge in *R. Vs. Peters* 16 Q.B.D. 636, which were to the following effect :

"I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of the words used in Acts of Parliament, but it is well-known rule of Courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books".

Accordingly the Nagpur High Court held that the expression "glassware" was wide enough to include all articles made of glass. It further observed that if there was any doubt, that was removed by the addition of the words "excepting bottles and lamp and lantern chimneys" in Entry No. 15 which addition was suggestive that but for the addition these items could have been covered by the entry and could have been covered only if glassware have understood in an enlarged sense.

7. Whether glass beads would be "glassware" came to be considered by the Allahabad High Court in Commissioner, Sales Tax Vs. Banaras Bead Manufacturing Co., . The phraseology of the entry was similar as the entries earlier considered by the High Court at Nagpur and glassware was required to be given the widest possible meaning particularly by the use of the excepting words following the entry and excluding from its purview hurricane lantern, chimneys and bottles. The very same High Court came to consider whether the entry would cover glass sheets manufactured and sold for use as window and door panes and not as raw material for manufacture or fabrication of other articles out of it and it was held that such panes would be encompassed in the expression "glassware".

8. The Orissa High Court was required to consider the expression "glassware" in State of Orissa Vs. Janata Medical Stores, . The Orissa High Court in the aforesaid decision was considering thermometers, lactometers, glass syringes, eyewash glasses and measuring glasses. The Court confirmed the decision of the Sales Tax Tribunal that these items did not come within the meaning of the expression "glassware" and, therefore, not within the purview of Item 38 of the Schedule of taxable goods. In Orissa at the relevant time sale of glassware was taxable at 7 per cent of the price, but in respect of these items the assessee had collected the paid tax at 5 per cent. The Orissa High Court has observed relying upon the three Supreme Court decisions noted in the said judgment that where an expression had not been defined in a taxing statute it had to be given the meaning which it held in common parlance. It was further observed that the extreme, peculiar and scientific meaning of the goods, which might sometimes deviate from the popular meaning, cannot be permitted to prevail. After finalising the approach, the Court applied its mind to the question before it and held that all these items were specialised materials which could not be understood to be glassware as ordinarily understood.

Understandably, Counsel on behalf of the Respondents relied strongly on the first four of the authorities above referred to, whereas the learned Counsel for the petitioners placed strong reliance on the observations of the Orissa High Court in State of Orissa Vs. Janata Medical Stores, .

9. In this context it may be mentioned that in para 4 of the petition it has been averred that the product Cell-O-Therm would be available in the hardware market and not in the glassware market, that it is insulation material and that both in appearance and in properties it is totally different from what is ordinarily connoted by the expression "glass".

10. Learned Counsel for the Respondents, however, contended that the material manufactured by the petitioners was a special type of glass and I was referred to the observations to be found in Glass Engineering Handbook by H. B. Shand (2nd Edn. 1958). The aforesaid chapter deals with cellular glass and the learned author makes the following observation :

"Cellular glass is made by heating pulverise glass together with a gasifying

substance, such as finely divided carbon, to a temperature which causes the glass to flow. The evolution of gas forms voids in the material, which swells to fill a closed container. The product is removed in the form of rigid blocks, which are cut to a variety of shapes. The voids amount to more than 90 per cent of the total volume."

The author then deals with the various applications of this special product viz. Cellular glass.

11. It will have to be accepted that for scientific purposes this product Cell-O-Therm which is made from broken glass in the manner earlier indicated, may be considered to be special type of glass and certainly it would be required to be so considered for the purposes of a scientific work on glass engineering technology; but this would not justify the application of this extreme, peculiar and scientific meaning to be given to the expression "glass" and "glassware" in Item 23A. To that extent I am in full agreement with the observations to be found at page 34 of the decision of the Orissa High Court in State of Orissa Vs. Janata Medical Stores, . For the purpose of giving the proper meaning in the expressions "glass" and "glassware" to be found in Item 23A, glass will have to be understood as understood in ordinary parlance as indicated earlier and in such parlance this special scientific type of glass which may be scientifically put within the category of "glass" though it may bear little resemblance to glass, will have to be excluded.

12. There is one further aspect of the matter which will be required to be mentioned. Even assuming that the special product obtained from crushed pieces of broken glass after addition of carbon black and after heating and processing the mixture may be considered (through I will not accept that this is a proper conclusion) to be a class of glass, is not made excisable under Item 23A. Item 23A(1) makes excisable only two limited varieties of glass viz. sheet glass and plate glass and in the remaining sub-items (2), (3) and (4) what is made excisable is glassware viz. articles made of glass, which must mean articles made of glass in the ordinary sense and not blocks or bricks of a product made from pieces of crushed glass after undergoing several physical and chemical processes. The product Cell-O-Therm, in my opinion, cannot be considered by any reasonable adjudicating authority to be either glass or glassware for the purposes of tariff item 23A.

13. Before parting with the matter it may be mentioned that I was referred to the relevant entries in Brussel's Nomenclature. These entries which are annexed as Ex. 2 to the affidavit in reply, may at the highest suggest that this product can be considered to be glass in its peculiar scientific meaning, but even if the product were to be so considered, in my judgment it can never be regarded made by any adjudicating authority as glassware. It is a product from glass and not an item or article made of glass.

14. It is well settled that where the adjudicating authorities, be they in customs

matters or excise matters, have preferred one of two possible meanings or placed a product in one category which could perhaps be better placed in another, the Court ordinarily ought not to interfere. However, if the adjudicating authorities have given a strained meaning to an expression used in ordinary parlance or acted in a manner not warranted by settled rules of interpretation then the Court has not merely the right to interfere but also a duty. In this connection the well settled rule of interpretation of fiscal provisions and reaffirmed on a number of occasions by the Supreme Court may be set down viz. that where a provision is ambiguous in its ambit and effect, the Revenue must suffer and the subject must get the benefit. In my opinion, it is unnecessary even to rely on such rule as I do not find any ambiguity or lack of clarity in Item 23A. It is only the interpretation and application of this Item by the adjudicating authorities earlier referred which is unsatisfactory and against the clear and obvious meaning of the expression. In the circumstances, the decisions of all the three authorities holding that this item Cell-O-Therm attracts excise duty under Item 23A(4) must be held to be perverse, totally improper and in this view of the matter, the rule is required to be made absolute in terms of prayers (a) and (b) of the petition.

15. There will be an order accordingly. The Respondents will also pay to the petitioners the costs of the petition which are quantified at Rs. 500 (Rupees five hundred).