

Atul Glass Industries (Pvt.) Ltd.

Vs

Collector of Central Excise

Hindustan Safety Glass Works Ltd.

Vs

Union of India and Others

Civil Appeal No. 3435 of 1984 and T.C. Nos. 349, 350 and 355 of 1983

(R. S. Pathak, Sabyasachi Mukharji JJ)

10.07.1986

JUDGMENT

PATHAK, J. –

1. The question raised in the appeal filed by Atul Glass Industries (Pvt.) Ltd. (C.A. No. 3435 of 1984) under Section 35-L(b) of the Central Excises and Salt Act, 1944 is whether glass mirrors fall under Tariff Item No. 23-A(4) or Tariff Item No. 68 of the First Schedule to the Central Excises and Salt Act.
2. That is also the question raised in the Transferred Cases Nos. 349, 350 and 355 of 1983 filed by the Hindustan Safety Glass Works Ltd., with an additional question whether the glass screens fitted in motor vehicles as wind screens, rear screens and window screens fall under Tariff Item No. 23-A(4) or Tariff Item No. 34-A or Tariff Item No. 68.
3. The appellant, Atul Glass Industries (Pvt.) Ltd., carries on the business of manufacturing and selling glass mirrors. It purchases duty paid glass sheets from the manufacturers of glass, and either in their original size or after reducing them to smaller sizes puts the glass sheets through a process of treatment. The glass pieces are buffed with the aid of buffing machines in order to improve the surface of the glass and prepare it for mirror processing. The glass is fed into an automatic silvering conveyor line where it passes through a stage of mechanical cleaning and polishing with the aid of nylon bristle brushes so that the glass surface is rendered free of scratches, dust particles and carbohydrates. The glass is then washed mechanically with the aid of cylindrical brushes using distilled water as a washing medium. Thereafter the glass surface is sensitised by chemical compounds such as stannous chloride, and rinsed with distilled or demineralised water to remove excess of chemicals. The sensitised glass is passed through a chamber where silver in liquid form with the aid of reducing solutions is applied as a very thin and uniform adherent reflective film on the surface of the glass. The silver coating, being of malleable metal, is protected by a coating of copper in the form of a thin metal deposit with the aid of an electromagnetic spray system. The excess of copper and acidic solutions are rinsed away with the distilled or demineralised water. Subsequently hot air is employed for the purpose of drying, and the humidity is removed completely with the aid of an infra-red heating system. After thorough drying, the silver and copper coatings are

protected with four coats of special mirror backing paint applied with the aid of a roller coating machine in four stages. The paint is baked in the baking conveyor after thorough drying. The other side of the mirror is mechanically cleaned. The mirror thus produced is finally sent for quality control inspection. Out glass is employed in the case of decorative mirrors. The cut glass is shaped with the aid of cutting lathe machines before subjecting it to the silver process. Edge grinding or bevelling and hole-drilling is done, if required, after the mirror has been manufactured.

4. Before the budget of 1979, Tariff Item No. 23 relating to 'glass and glassware' prescribed the different rates of duty in respect of (1) sheet glass and plate glass, (2) laboratory glassware, (3) glass shells, glass globes and chimney for lamps and lantern, and (4) 'other glassware including tableware'. During the period following the budget of 1979 which is the period which concerns us, Tariff Item No. 23-A relating to glass and glassware specified the rates of duty in respect of (1) flat glass, which included sheet glass, wired glass and rolled glass whether in the form of plate glass, figured glass or in any other form, (2) laboratory glassware, (3) glass shells, glass globes and chimney for lamps and lantern and (4) 'other glass and glassware including tableware'. Tariff Item No. 68 is of residuary character and relates to "all other goods not elsewhere specified," but excluding alcohol, opium and certain other goods specified therein. The rate of duty is higher if the product falls under Tariff Item No. 23-A(4) than if it fell under Tariff Item No. 68. The appellant submitted a classification list showing glass mirror as covered by duty under Item No. 68. Before March 1, 1979 glass mirrors were treated as exempt from duty as they were manufactured from duty paid glass. The exemption was cancelled from March 1, 1979. Simultaneously Tariff Item No. 23-A(4) underwent an amendment, as mentioned earlier, by the substitution of words 'other glass and glassware' for the words 'other glassware'.

5. On January 28, 1980 the excise authorities issued a notice calling upon the appellant to take out an L-4 Licence on the ground that glass mirrors were classifiable as 'other glass' within the meaning of Tariff Entry No. 23-A(4) as a product now dutiable from March 1, 1979. The appellant filed a writ petition in the Delhi High Court and simultaneously preferred an appeal before the Collector (Appeals). The High Court disposed of the writ petition without deciding the question of liability to duty on its merits, observing that the appellant should pursue its appeal before the Collector (Appeals). On January 24, 1984 the appeal was allowed by the Collector (Appeals). He held that Tariff Item No. 68 applied to glass mirrors. The revenue appealed to the Customs, Excise and Gold (Control) Appellate Tribunal. The Appellate Tribunal allowed the appeal and reversed the decision of the Collector (Appeals) holding that Tariff Item No. 23-A(4) was attracted. The Appellate Tribunal held that glass mirrors should be classified as 'glassware'. And now this appeal.

6. It appears from the record before us that the true classification of glass mirrors has been the subject of fluctuating opinion among the higher echelons of the revenue. Opinion has varied from time to time. Tariff Advice No. 60 of 1979 dated December 18, 1979 issued by the Central Board of Excise and Customs took the stand that glass mirrors could be described as glassware and therefore, merited classification under Tariff Item No. 23-A(4). Subsequently on doubts being raised regarding such classification, the Central Board of Excise and Customs considered the matter further, and by Tariff Advice No. 61 of 1980 dated September 27, 1980 opined that glass mirrors would fall under Tariff Item No. 68 inasmuch as while glass sheets were used as raw material the subsequent processing applied thereto gave rise to a different commercial product altogether, the utility of the glass being reduced to a mere medium. This was, of course, subject to the condition that the glass sheets, out of which the glass mirrors were prepared, had paid appropriate duty under Tariff Item No. 23-A before being employed in the manufacture of mirrors. The controversy was reopened later, and the Central Board of Excise and Customs reverted to its original understanding of the

classification for the product. By Tariff Item No. 41 of 1981 dated May 7, 1981 it pointed out that glass mirrors had been classified under the Brussels Tariff Nomenclature as "glass and glassware" and taking the view that after undergoing silvering a glass mirror still remained glass it advised that glass mirrors should be treated as liable to excise duty under Tariff Item No. 23-A(4) as 'other glass and glassware'. It has been noticed that the Superintendent of Central Excise called upon the appellant to take out a L-4 licence on the footing that glass mirrors fell under Tariff Item No. 23-A(4), that on appeal, the Collector (Appeals) reached the conclusion that it was not open to such classification but fell under the residuary Tariff Item No. 68, and that the Appellate Tribunal thereafter reversed the Collector (Appeals) and upheld the Superintendent of Central Excise. It is in this uncertain climate of opinion that the question calls for decision by this Court.

7. A broad description of the process through which a glass sheet passes has been detailed earlier. It indicates clearly to our mind that the original glass sheet undergoes a complete transformation when it emerges as a glass mirror. What was a piece of glass simpliciter has now become a commercial product with a reflecting surface. Into the process of transformation have gone successive stages of processing with the aid of chemicals such as stannous chloride, silver nitrate and copper coating besides an entire range of physical processes involving polishing, washing, coating, drying, varnishing, evaporation and cooling. The evolved product is completely different from the original glass sheet. What was once a glass piece in its basic character has no longer remained so. It has been reduced to a mere medium. That is clear if regard is had to the fundamental function and qualities of a glass mirror. The power to reflect an image is a power derived not from the glass piece but principally from the silvering and other processes applied to the glass medium. If any part of the coating is scratched and removed, that particular area of the glass mirror will cease to be glass mirror. That simple test demonstrates the major importance attributable to the chemical deposit and coating which constitute a material component of a glass mirror. It is not mandatory that a mirror employed for the purpose of reflecting an image should have a glass base. Copper mirrors have been known from the dawn of history. In the modern age, acrylic sheets are sometimes used instead of glass for manufacturing mirrors. It is apparent, therefore, that a glass mirror cannot be regarded as a glass. For the same reason, it cannot be classified as 'glassware', for 'glassware' means merchandise made of glass and understood in its primary sense as a glass article. A glass bowl, a glass vase, a glass tumbler, a glass table top and so on are all articles in which the primary component is glass. They are nothing more and nothing less. Any treatment of an ornamental nature applied to such articles does not derogate from their fundamental character as glass articles. It is quite the contrary in the case of a glass mirror. The case is more akin to that of carbon paper. A sheet of paper with a carbon coating thereon is employed for the purpose of producing copies of the original. The paper is a mere base while the function is performed by the carbon coating. This Court held in *State of U.P. v. Kores (India) Ltd.* ((1977) 1 SCR 837 : (1976) 4 SCC 477 : 1977 SCC (Tax) 40 : AIR 1977 SC 132) that carbon paper could not be described as paper. It referred to the functional difference between the two, and pointed out that while paper would be understood as meaning a substance which are used for writing or printing or drawing on or for packing or decorating or covering the walls, carbon paper, which is manufactured by coating the tissue paper with a thermo-setting ink based mainly on wax, non-drying oils, pigments and dyes could not be so described.

8. The test commonly applied to such cases is : How is the product identified by the class or section of people dealing with or using the product ? That is a test which is attracted whenever the statute does not contain any definition. *Porritts and Spencer (Asia) Ltd. v. State of Haryana* ((1978) 42 STC 433 : (1979) 1 SCC 82 : 1979 SCC (Tax) 38 : AIR 1979 SC 300). It is generally by its functional character that a product is so identified. In *C.S.T., U.P. v. Macneill & Barry Ltd., Kanpur* ((1986) 1 SCC 23 : 1986 SCC (Tax) 155), this Court expressed the view that ammonia paper and ferro paper,

used for obtaining prints and sketches of site plans could not be described as paper as that word was used in common parlance. On the same basis the Orissa High Court held in *State of Orissa v. Gestetner Duplicators (P) Ltd.* ((1974) 33 STC 333 (Ori)) that stencil paper could not be classified as paper for the purposes of the Orissa Sales Tax Act. It is a matter of common experience that the identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for him. There is a mental association in the mind of the consumer between the article and the need it supplies in his life. It is the functional character of the article which identifies it in his mind. In the case of a glass mirror, the consumer recalls primarily the reflective function of the article more than anything else. It is a mirror, an article which reflects images. It is referred to as a glass mirror only because the word glass is descriptive of the mirror in that glass has been used as a medium for manufacturing the mirror. The basic or fundamental character of the article lies in its being a mirror. It was observed by this Court in *Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan* ((1980) 3 SCR 1109 : (1980) 4 SCC 71 : 1980 SCC (Tax) 548 : AIR 1980 SC 1552) which was a case under the Sales Tax law : (SCC pp. 75-76, para 7)

.....In determining the meaning or connotation of words and expression describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted.

That was also the view expressed in *Geep Flashlight Industries Ltd. v. Union of India* ((1985) 22 ELT 3). Where the goods are not marketable that principle of construction is not attracted. *Indian Aluminium Cables Ltd. v. Union of India* ((1985) 3 SCC 284 : 1985 SCC (Tax) 383). The question whether thermometers, lactometers, syringes, eyewash glasses and measuring glasses could be described as 'glassware' for the purpose of the Orissa Sales Tax Act, 1947 was answered by the Orissa High Court in *State of Orissa v. Janta Medical Stores* ((1976) 37 STC 33 (Ori)) in the negative. To the same effect is the decision of this Court in *Indo International Industries v. C.S.T., Uttar Pradesh* ((1981) 3 SCR 294 : (1981) 2 SCC 528 : 1981 SCC (Tax) 130 : AIR 1981 SC 1079), where hypodermic clinical syringes were regarded as falling more accurately under the entry relating to "hospital equipment and apparatus" rather than under the entry which related to "glasswares" in the UP Sales Tax Act.

9. Reliance was placed by the revenue on *C.S.T., U.P. v. Banaras Bead Manufacturing Co.* ((1970) 25 STC 100 (All)) where the Allahabad High Court held that glass beads could be described as 'glassware' for the purpose of a Notification issued under the UP Sales Tax Act. The decision of the High Court rested on the manner in which the contextual setting was altered in successive and different Notifications promulgated under the UP Sales Tax Act, indicating the content of the expression as developed through successive notifications.

10. Our attention has been drawn on behalf of the revenue to the circumstance that glass mirrors have been classified as 'glass and glassware' in Chapter 70 of the Brussels Tariff Nomenclature. It seems to us that this circumstance can hardly advance the case of the revenue, because the First Schedule to the Central Excises and Salt Act does not appear to have been modelled on the Brussels Tariff Nomenclature. There is nothing to show that the tariff items were classified in the Schedule on the basis of the Brussels Tariff Nomenclature. It was when the Customs Tariff Act, 1975 was enacted that the First Schedule to that Act was framed in accordance with the Brussels Tariff

Nomenclature, evidently because the progress made in industrial growth and economic development, and the substantial changes in the composition and pattern of India's external trade called for the need to modernise and rationalise the nomenclature of India's tariff in line with contemporary conditions (Introductory Comments on the Customs Tariff Act, 1975). The glass mirrors were still not specifically mentioned under the Customs Tariff Act, 1975. They are now being brought in as such by the Customs Tariff Bill, 1985.

11. It is pointed out that glass mirrors have been classified by the Indian Standards Institution as "glass and glassware" in the glossary of terms prepared by it in respect of that classification. That, to our mind, furnishes a piece of evidence only as to the manner in which the product has been treated for the purpose of the specifications laid down by the Indian Standards Institution. It was a test employed by this Court in *Union of India v. Delhi Cloth & General Mills* ((1963) Supp 1 SCR 586 : AIR 1963 SC 791), but was regarded as supportive material only of the expert opinion furnished by way of evidence in that case. The considerations to which we have adverted should, in our opinion, have greatly weighed in deciding the question raised in this appeal. So also in *Union Carbide Co. Ltd. v. Assistant Collector of Central Excise* (1978 ELT 180), the description set forth in the publications of the Indian Standards Institution was regarded as a piece of evidence only. There were other more tangible considerations which weighed with the Court in reaching its conclusions.

12. We are firmly of the view that glass mirrors cannot be classified as 'other glass and glassware' set forth in Tariff No. 23-A(4), and must therefore fall under the residuary Tariff Item No. 68.

13. An additional point arises in *M/s Hindustan Safety Glass Works Ltd.* (Transfer Cases Nos. 349, 350 and 355 of 1983). The manufacturers of motor vehicles place orders with the appellant for the manufacture of screens for fitting in motor vehicles. They are commonly known as wind screens, rear screens and door screens. The screens are manufactured according to the specific shape and measurements indicated in the orders, for different vehicles require screens of different shapes and measurements. The screen is manufactured from sheet glass. It is first given shape and size according to the specifications contained in the order and thereafter subjected to the process of toughening. It is a fabricated article.

14. The Superintendent of Central Excise called upon the petitioner to pay excise duty on the basis that the screens fell under Tariff Item No. 23-A(4) relating to 'glass and glassware'. The petitioner filed writ petitions in the Allahabad High Court challenging the view taken by the excise authorities. The question in these cases is whether the screens manufactured by the petitioners can be classified under Tariff Item No. 23-A(4) or Tariff Item No. 34-A or Tariff Item No. 68.

15. Prior to February 28, 1979 Tariff Item No. 34-A, which was headed Item No. 34-A - Motor Vehicle Parts, related to "Parts and accessories not elsewhere specified, of Motor vehicles and Tractors, including Trailers", and the rate of duty prescribed was 20% ad valorem. Under Rule 8 of the Central Excises Rules, the Central Government issued Notification No. M.F. (D.R.I.) 99/71 dated May 29, 1971, as amended by a subsequent notification, exempting parts and accessories of motor vehicles and tractors falling under Tariff Item No. 34-A other than those specified in the Schedule annexed to the notification, from the whole of the duty of excise leviable thereon. The Schedule annexed to the notification did not mention the screens manufactured for motor vehicles. The parts and accessories specifically mentioned in the Notification to the Schedule were covered by a Notification No. 101/71 C.E. dated May 29, 1971 as amended subsequently, by which the Central Government exempted under Rule 8 parts and accessories of motor vehicles, provided it was established to the satisfaction of the Collector of Central Excise that the parts were intended to be

used as original equipment parts by the manufacturers of motor vehicles and tractors falling under Tariff Item No. 34-A. The Finance Bill of 1979 introduced changes in Tariff Item No. 34-A. Tariff Item No. 34-A now spoke of 'parts and accessories of motor vehicles and tractors, including trailers, the following namely' - and here followed 15 parts and accessories. The screens manufactured by the petitioner did not figure in that list. Until the enactment of the Finance Bill of 1979, the commodities manufactured by the petitioner would have fallen within the ambit of Tariff Item No. 34-A. But after the introduction of the Finance Bill 1979 the Central Government issued Notification No. 76 of 1979 C.E. dated March 1, 1979 under Rule 9, whereby parts and accessories of motor vehicles and tractors which had not been specified in Tariff Item No. 34-A but which fell under that tariff item were exempted from so much duty of excise leviable thereon as was in excess of 8 per cent ad valorem. Two more notifications were issued, No. 74/79 C.E. dated March 1, 1979 and No. 75/79 C.E. dated March 1, 1979. By these notifications parts and accessories of motor vehicles and tractors falling under Tariff Item No. 34-A were exempted from the whole of the duty of excise leviable thereon provided the said parts or accessories were intended to be used in the manufacture of assembled components of motor vehicles and tractors and such assembled components were used as original equipment parts by the manufacturers of those vehicles and such parts and accessories which were intended to be used as original equipment parts by such manufacturers. On the enforcement of the Finance Act, 1979 the ambit of Tariff Item No. 34-A became restricted to the 15 specified commodities. The commodities manufactured by the petitioner did not fall within the ambit of Tariff Item No. 34-A.

16. It is the case of the petitioner that the commodities manufactured by it fall within the ambit of the residuary Item No. 68 of the First Schedule to the Central Excises and Salt Act. Prior to the enforcement of the Finance Act, 1979 the Central Government had, under Rule 8, issued Notification No. 166 C.E. dated April 19, 1979 whereby all excisable goods on which the duty of excise was payable and in the manufacture of which parts and accessories of motor vehicles falling under Item No. 34-A had been used were exempted from so much of the duty of the excise leviable thereon as was equivalent to the duty of excise paid by the said parts and accessories. Another Notification No. 167/79 dated April 19, 1979 was issued under Rule 8 whereby parts and accessories of motor vehicles falling under Item No. 34-A and intended for use in further manufacture of excisable goods were exempted from the whole of duty leviable thereon provided that the intended use was in a factory of a manufacturer different from the factory in which the said parts and accessories had been manufactured. The Notification did not apply to the 15 specified items. Subsequently the two Notifications were amended by Notification No. 187/79 C.E. dated May 10, 1979 by deleting the reference to Tariff Item No. 34-A and substituting for it Tariff Item No. 68. According to the petitioner the result of these successive notifications is that the parts and accessories of motor vehicles fall under Tariff Item No. 34-A prior to the enforcement of Finance Act, 1979 and after the enforcement of that Act they fall under Tariff Item No. 68 provided that the parts and accessories of motor vehicles do not find mention in Tariff Item No. 34-A as amended by the Finance Act, 1979.

17. Upon the tests and having regard to the foregoing considerations which have appealed to us when considering the proper classification of glass mirrors, we have no hesitation in holding that the screens cannot be described as "glass or glassware" under Tariff Item No. 23-A(4). No one dealing in or using the screens would consider them as "glass or glassware". They can only be considered as motor vehicle parts. Even if we assume that they could fall under Tariff Item No. 23-A(4) relating to 'glass and glassware' also, inasmuch as Tariff Item No. 34-A is a special entry and Tariff Item No. 23-A(4) is a general entry, the special must exclude the general and therefore also it is Tariff Item No. 34-A which prevails and is attracted.

18. It is clear, however, that after the amendment of Tariff Item No. 34-A by the Finance Act, 1979 the scope of that tariff item is restricted to the 15 commodities specified therein. That being so that the screens manufactured by the petitioner merit classification in the residuary Tariff Item No. 68.

19. In the result, Civil Appeal No. 3435 of 1984 is allowed, the order dated July 24, 1984 of the Customs, Excise and Gold (Control) Appellate Tribunal is set aside and the order dated January 24, 1984 of the Collector (Appeals) is resorted. In the Transfer Cases, we allow the writ petitions and direct that the glass mirrors and screens manufactured by the petitioner be treated to excise duty in the light of the observations made by us. The parties shall bear their own costs.

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