

SUPREME COURT OF INDIA

Commissioner of Central Excise and Customs, Gujarat

Vs.

Pan Pipes Limited

C.A.No.4617 of 2000

(Ashok Bhan and C. K. Thakker JJ.)

01.12.2005

JUDGMENT

Ashok Bhan, J.

1. The present Appeal has been filed by the Commissioner of Central Excise and Customs under Section 35-L(b) of the *Central Excises and Salt Act, 1944* (for short "The Act") against the judgment and final order dated 1st February, 2000 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (for short "The Tribunal") Western Zone Bench, Mumbai in Appeal No. E/2237/98-BOM in Order No. C-II/297/2000 whereby the Tribunal has set aside the Order of the Commissioner of Central Excise and allowed the Appeal filed by the Respondent M/s. Pan Pipes Respondents Ltd. (for short "The Respondent").

2. The Respondent after obtaining plain glazed tiles which were duty paid processed them into decorated ceramic glazed wall tiles. The process, according to the Respondent was of two types; the first type was screen printing tiles which tiles were subjected to firing only for fastening the wet colours and second variety was that of decorating glazed tiles which consisted of application of glass fritz of various colours as per the designs on the surface of the glazed tiles which on being fired would melt and blend with the surface of the tiles thereby turning the glazed tiles into decorative tiles.

3. The point which fell for consideration before the Tribunal was as to whether activities elaborated above amounted to 'manufacture' of new and distinct commercially known product coming into existence. Relying upon the Judgment of this Court in the case of *Union of India and Others v. J.G. Glass Industries Ltd. and Others* reported in : 5, (relied on) the Tribunal came to the conclusion that the tiles after being decorated did not change their character and remained to be glazed tiles. The glazed tiles did not go under the process of manufacture and therefore it cannot be held that the decorated ceramic glazed wall tiles were a new and distinct commodity. The Tribunal relied upon paragraph 16 of the Judgment in *J.G. Glass Industries Ltd.'s case* (supra) which reads as under:-

"16. On an analysis of the aforesaid rulings, a twofold test emerges for deciding

whether the process is that of "manufacture". First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; secondly, whether the commodity which was already in existence will serve no purpose but for the said process. In other words, whether the commodity already in existence will be of no commercial use but for the said process. In the present case, the plain bottles are themselves commercial commodities and can be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity does not change. They continue to be bottles. It cannot be said that but for the process of printing, the bottles will serve no purpose or are of no commercial use."

4. In the aforesaid case this Court has held that by the process of printing names or logos on the bottles, the basic character of the commodity did not change and they continued to be bottles.

5. The point which falls for consideration in this case is whether printing/decorating of duty paid plain glazed ceramic tiles amounts to manufacture or not in terms of Section 2(f) of the *Central Excise Act, 1944*. The process for amounting to manufacture must be one which brings into being a new substance known to the market. Manufacture implies a change but every change is not a manufacture and yet every change in an article is the result of some treatment, labour and manipulation. For manufacture something more is necessary. There must be transformation and a new article must result, having a distinct name, character or use. These conditions are not satisfied in the instant case because ceramic glazed tiles remain ceramic glazed wall tiles even after process of printing and decorating. Persons dealing in this commodity recognize the same as wall tiles before and after printing and decorating. Transformation of a product must be such that it becomes commercially different commodity to attract central excise duty unless a new and distinct article known commercially to the market emerges the process will not amount to manufacture. In the present case no distinct commodity comes into being as a result of process carried out by the Respondent. It is not the case of the Department that ceramic glazed tiles which are subjected to printing and decoration would be commercially useless but for the process carried out by the Respondent.

6. In the present case the decorated glazed ceramic wall tiles after their decoration did not change their basic character viz glazed tiles and therefore did not undergo a process of manufacture. In our opinion, the Respondent's case is fully covered by the decision of this Court in the case of J.G. Glass Industries Ltd.'s case (supra). We do not find any infirmity in the Judgment of the Tribunal and the same is upheld. The Appeal is dismissed with no order as to costs.