SUPREME COURT OF INDIA

Union of India

Vs.

Alembic Glass Indust. Ltd.

C.A.Nos.3889-3891 of 2003

(D.K.Jain, P.Sathasivam and Aftab Alam JJ.)

06.05.2010

ORDER

1. These appeals, by special leave, are directed against the final judgment and order dated 23rd January 2002 delivered by the High Court of Gujarat at Ahmedabad in Special Civil Application No.2528 of 1984. By the impugned judgment, the High court has quashed orders dated 11th May, 1984 and 14th May, 1984 whereby the Assistant Collector had cancelled the approved price list and the revised ground plan respectively as also the consequential show cause notices issued to the respondent - assessee. While deciding the appeals in favour of the assessee, the High Court has placed reliance on the decision Industries Ltd. and others1.

2. The assessee carries on the business of manufacturing glassware as also the process of colour printing and decoration of the glassware so manufactured. It appears that based on trade notice No.MP/24/80 dated 8th February 1980, which in turn was based on tariff advice No.2/80 dated 4th January 1980, the assessee pleaded that the activity of printing and decorating glassware, already manufactured, in a separate factory did not amount to "manufacture" and, therefore, the value in relation to the said process would not be includible for the purpose of levy of Excise duty. It was argued that unless the said process brings into existence a different commercial product, it cannot be said to be a manufacturing process. It was also asserted that the printing unit was separate from the main unit manufacturing the glassware. A revised ground plan was placed before the competent authority on 18th May, 1983. On 1st June, 1983, the assessee also obtained a separate licence under the Factories Act, 1948 for the decorating unit. On 2nd June 1983, the revised ground plan was approved by the competent 1 (1998) 2 SCC 32 authority and on 7th July, 1983, the fresh price list was provisionally approved with effect from 3rd June, 1983. The competent authority, after conducting enquiry finally approved the fresh price list on 7th October, 1983.

3. On 11th May, 1984, the same authority who had approved the price list and the revised ground plan cancelled the approval of the price list. On 14th May, 1984, the approval of the revised ground plan was also cancelled.

4. Being aggrieved, the assessee challenged the said two orders before the High Court by way of a writ petition. As stated above, the High Court, following the decision of this Court in J.G. Glass Industries Ltd. and others (supra) has allowed the petition and set aside both the said orders. Aggrieved thereby, the revenue is before us in these appeals.

5. We have heard learned counsel for the parties.

6. Mr. Bhatt, learned senior counsel appearing on behalf of the revenue, has submitted that since in the present case the assessee had taken the matter directly to the High Court by way of a writ petition, the High Court accepted the stand of the assessee that the activity of decoration etc. was being carried out in a separate premises without any verification of the stand of the assessee. Learned counsel thus, contends that the ratio of the decision of this Court in J.G. Glass Industries Ltd. and others (supra) is not applicable on the facts of the present case.

7. We are unable to persuade ourselves to agree with learned counsel for the revenue.

8. In order to decide whether or not a process amounts to "manufacture" within the meaning of Section 2 (f) of the Central Excise And Salt Act, 1944 (as it then existed), in J.G. Glass Industries Ltd. and others (supra), this Court laid down a two- fold test, viz., (1) whether by the said process a different commercial commodity comes into existence or the identity of the original commodity ceases to exist; and (2) 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. Applying the said two-fold test, the Court held that the plain bottles were themselves commercial commodities and could 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 and, therefore, it cannot be said that but for the process of printing, the bottles will serve no purpose or are of no commercial use. However, while holding so, the Court drew a distinction between a case where the printing on the bottles was also carried out in the same factory where the bottles were manufactured and a case where the printing on the bottles was being carried out in a separate unit.

9. The Court finally held that if the printing and decoration etc. on such bottles was carried out in a premises different from that in which the bottles were manufactured, the value of the printing will not be includible while determining the assessable value of the excisable goods for computing the excise duty.

10. In the present case, it is clear from the impugned judgment that for accepting the stand of the assessee that it had a separate unit for carrying out the process of decoration etc. on the glassware, the High Court has taken note of the fact that the four show cause notices issued after 21st May, 1984, pertained to the period during which the goods were cleared by the assessee under the price list finally approved on 7th October 1983, in respect of a sesparate unit for which revised ground plan was submitted and approved. This fact was not disputed

by the revenue before the High Court. In that view of the matter, no fault can be found with the decision of the High Court, holding that the issue stood concluded by the aforementioned decision of this Court.

11. Therefore, the appeals, being devoid of any merit, are dismissed leaving the parties to bear their own costs.