

# ALLAHABAD HIGH COURT

Swan Bangle Stores

Vs.

Assistant Sales Tax Officer and Ors

Civil Misc. Writ No. 1771 of 1968  
(R.S. Pathak and R.L. Gulati, JJ.)

11.03.1969

## JUDGMENT

**R.S. Pathak, J.**

1. The facts are set out in the judgment proposed by my brother Gulati.
2. The question is whether plain glass bangles and ornamented glass bangles are to be regarded as essentially the same commercial commodity or can they be considered as two distinct, commercial commodities.
3. Glass bangles constitute a commodity which is well known. They may be plain or cut or ornamented. They are manufactured in their plain state. With some processing indentations are cut into plain bangles, and they take the appearance of cut glass bangles. The indentations may be filled with liquid gold to give the bangles an ornamented appearance. In each case what is done is to put the glass bangles through a further process. The consequence of the processing is to give a slightly different appearance to the surface of the glass bangles. Essentially, the glass bangle continues to be the same article. The processing does not result in the emergence of a new commercial commodity and it cannot be said that it amounts to manufacture. There is a distinction between mere processing and manufacture, and the distinction was brought out by the Supreme Court in *Union of India v. Delhi Cloth and General Mills*<sup>1</sup> in the following words :

According to the learned counsel 'manufacture' is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate 'processing' to 'manufacture' and for this we can find no warrant in law. The word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance', however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Volume 26, from an American judgment. The passage runs thus :

Manufacture" implies a change, but every change is not manufacture and yet every

<sup>1</sup> A.I.R. 1963 S.C. 791

change of an article is the result of treatment, labor and manipulation. But something -more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use.'

4. The processing to which the glass bangles are subjected may conceivably result in different varieties of glass bangles, but I am unable to say that as between themselves each variety can be considered as a distinct commercial commodity. Different names may perhaps be given for the purpose of distinguishing one variety from another, but whether they are plain glass bangles or ornamented glass bangles their character and use remains the same. That character and use is not affected by the superficial change in appearance from plain bangles to ornamented glass bangles. I might refer to the observations in *B. Dar Laboratories v. State of Gujarat*<sup>2</sup>, where it was said :

...when a process is adopted for convenience of sale or making the article more acceptable to the customers, if the article in question retains its essential character, it has to be taxed as such article only and the processing would make no difference. The physical state or even the composition may change but so long as the essential character of the article continues to remain the same, it has to be taxed as that commodity alone.

5. I need not refer to the other cases cited before us because, in my opinion, it is perhaps possible to say that the question in some of those cases arose in a somewhat different context.

6. As regards the material on the record before us, I am unable to discover anything there which supports the case of the respondents that plain glass bangles and ornamented glass bangles are distinct commercial commodities.

7. In my judgment, glass bangles, being a single commercial commodity, cannot be taxed twice by a notification under Section 3-A of the U.P. Sales Tax Act. On that ground alone, I hold that Notification No. ST-471/X-900-(45)/1965, dated 1st February, 1966, is ultra vires.

8. In the result, the petition is allowed. A writ in the nature of certiorari shall issue quashing the assessment order dated 18th November, 1966, made against the petitioner for the assessment year 1965-66. There is no order as to costs.

**R.L. Gulati, J.**

9. This petition under Article 226 of the Constitution is directed against an assessment order under the U. P. Sales Tax Act (hereinafter referred to as "the Act").

10. The petitioner which is a partnership firm is a dealer in glass bangles at Firozabad. Amongst

other varieties of bangles it deals in a variety called the ornamented glass bangles. It buys glass bangles in plain form from glass factories at Ferozabad and sells them after subjecting them to a process of ornamentation.

<sup>2</sup>(1968) 22 STC 160

11. Prior to the assessment year 1965-66 glass bangles were a single point taxable commodity, the turnover whereof was taxable in the hands of the manufacturers or importers (We are not concerned in this case with importers). On 1st February, 1966, the State Government issued a notification under Section 3-A of the Act being Notification No. 471/X-900(45)-65 which contained two separate entries, one relating to plain glass bangles and the other to ornamented glass bangles. The turnover of both the varieties of glass bangles was made taxable at 7 paise per rupee. The point of sale in the former variety was the sale by the manufacturer while in the case of the latter variety it was the sale by the ornamenter. Under this notification sales tax was levied upon the petitioner in respect of the assessment year 1965-66 for the period 1st February, 1966, to 31st March, 1966, and similarly for subsequent assessment year 1966-67 the tax was levied on the petitioner's turnover of ornamented glass bangles, treating it to be the ornamenter. The petitioner has challenged the assessment order for the assessment year 1965-66 by means of this writ petition on the ground that the notification referred to above is ultra vires.

12. It is contended that the ornamented and plain glass bangles are in reality one and the same commodity and their turnover cannot be subjected to tax twice-once in the hands of the manufacturer and again in the hands of the ornamenter as has been sought to be done under the impugned notification. It is further contended that the aggregate tax upon the turnover of glass bangles would come to 14% which would exceed the maximum rate prescribed under Section 3-A which at the material time was 10% only.

13. Before examining this contention it is necessary to state that although the petitioner had filed an appeal against the impugned assessment, yet his contention relating to the vires of the notification was not adjudicated upon by the appellate authority in view of the decision of the Supreme Court in *Beharilal Shyamsunder v. Sales Tax Officer*<sup>3</sup>, where the Supreme Court held that the sales tax authorities had no jurisdiction to adjudicate upon the validity of any provision or notification of the Sales Tax Act. The alternative remedy provided in the Act not being efficacious, this is a fit case in which the petitioner should be allowed to invoke the writ jurisdiction of this court.

14. According to the scheme of the Act, the turnover of every commodity is taxable at all points of sale at a uniform rate prescribed under the charging Section 3 which at the material time was three pies per rupee. Section 3-A is an exception to the charging section inasmuch as it authorizes the State Government to levy tax at a rate different from the one prescribed in Section 3 and to restrict the levy to one sale in the series of sales. Section 3-A provides :

3-A. (1) Notwithstanding anything contained in Section 3, the State Government may, by

notification in the official Gazette, declare that the turnover in respect of any goods or class of goods shall not be liable: to tax except at such single point in the series of sales by successive dealers as the State Government may specify.

(2) If the State Government makes a declaration under Sub-section (1), it may further declare that the turnover in respect of such goods shall be liable to tax at such rate not exceeding ten naye paise per rupee as may be specified...

15. Obviously the power of the State Government under Section 3-A is-restricted to

<sup>3</sup> Cutt 60 I.T.R. 260

certain goods or class of goods. The turnover of same goods or goods belonging to the same class cannot be subjected to tax under Section 3-A more than once by introducing an artificial classification. If the plain bangles and ornamented glass bangles are not different goods or do not belong to different classes of goods, they cannot be made the subject of a charge separately. The short question which, therefore, arises is whether plain glass bangles and ornamented glass bangles are two different kinds of goods or belong to the same class of goods.

16. It may be mentioned here that it was on the 8th of June, 1948, that glass bangles were included for the first time in Section 3-A by means of Notification No. S.T. 117/X-923-1948. Entry No. 15 of the Schedule attached to that notification was "glass bangles". The point of tax was the sale by the manufacturer or the importer depending upon as to whether bangles were manufactured inside Uttar Pradesh or were imported from outside Uttar Pradesh and the rate of tax was six pies per rupee. There was no separate entry relating to ornamented glass bangles so that all varieties of glass bangles were comprehended within entry No. 15. On the 30th March, 1949, the entry "glass bangles" was deleted from the abovementioned notification of 8th June, 1948. But later on glass bangles were once again brought into the ambit of Section 3-A and by various notifications issued from time to time the rate of tax on the turnover of glass bangles was progressively increased until it was fixed at 7 Np. per rupee under a notification dated 1st December, 1962. In all these notifications glass bangles continued to appear under a single entry representing one class of goods. It is only on 1st February, 1966, that the impugned notification was issued which, as mentioned earlier, split the entry relating to glass bangles into two separate entries, viz., plain glass bangles and ornamented glass bangles. The rate of tax on the turnover of each variety was fixed at 7 paise per rupee.

17. Admittedly the petitioner is not a manufacturer of glass bangles. He purchases plain bangles at Firozabad and carries out the process of ornamentation. The onus lay upon the sales tax authorities to show that glass bangles after ornamentation become a different commercial commodity or a different class of goods. On the record before us I do not find any such material. It has not been shown that glass bangles after undergoing the process of ornamentation cease to remain glass bangles or become a different commercial commodity. On the other hand, the petitioner has appended with its rejoinder-affidavit the samples of plain, cut and ornamented

glass bangles. It has not been asserted on behalf of the State that the samples of ornamented glass bangles appended to the affidavit of the petitioner are not the type of bangles that are dealt in by the petition. I find that the ornamentation is nothing but slight painting in liquid gold on the outer surface of the glass bangles. The ornamented glass bangles do not look materially different from plain or cut glass bangles.

18. It is also not the contention of the opposite parties that the process of ornamentation is a process of manufacture and I am of the firm opinion that the application of liquid gold on the outer surface of bangles cannot be called a process of manufacture. The ornamentation may at best be called processing and there is a well-recognized distinction between the two.

19. In *Union of India v. Delhi Cloth and General Mills*<sup>4</sup> the Supreme Court brought out the distinction between "manufacture" and "processing" in the following words :

According to the learned counsel 'manufacture' is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate 'processing' to 'manufacture' and for this we can find no warrant in law. The word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance', however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Volume 26, from an American judgment. The passage runs thus :

"Manufacture" implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use.

20. The same distinction has recently been brought but by the Gujarat High Court in *B. Dar Laboratories v. State of Gujarat*<sup>5</sup>, where it was held:

...when a process is adopted for convenience of sale or making the article more acceptable to the customers, if the article in question retains its essential character, it has to be taxed as such article only and the processing would make no difference. The physical state or even the composition may change but so long as the essential character of the article continues to remain the same, it has to be taxed as that commodity alone.

21. Reference in this connection may also be made to another case of the Supreme Court in *State of Madhya Pradesh v. Hira Lal*<sup>6</sup> where the dealer concerned converted scrap iron-purchased locally and imported-into bars, flats and plates which he sold in the market. The dealer claimed that what he sold was nothing else but iron and steel which was a commodity exempt from sales

tax. The revenue sought to impose tax on the ground that what the dealer sold fell within the description "goods prepared from any metal". The Supreme Court held that what the dealer purchased was iron and what he sold was also iron and the conversion of the raw material (iron) into bars, flats and plates did not alter the character of the commodity.

22. A similar view was expressed by the Supreme Court in *Tungabhadra Industries Ltd. v. Commercial Tax Officer*<sup>7</sup> where the question was as to whether hydrogenated groundnut oil (popularly known as Vanaspati) was a commodity different from the groundnut oil. Vanaspati is manufactured from groundnut oil by a chemical process known as hydrogenation. This process brings about an intermolecular change which results in the hardening of the oil. The Supreme Court held that notwithstanding the intermolecular change the commodity continued to be the same as it was before undergoing the process of hydrogenation.

<sup>4</sup>A.I.R. 1963 S.C. 791           <sup>6</sup>[1966] 17 S.T.C. 313 (MP)

<sup>5</sup>(1968) 22 STC 160           <sup>7</sup>[1960] 11 S.T.C. 827

23. In *State of Gujarat v. Sakarwala Brothers*<sup>8</sup>, the Supreme Court held that patasa, harda and alchidana were all included in the term "sugar" which included within its ambit all forms of sugar, that is to say, sugar of any shape, texture, colour or density and by whatever name called.

24. Yet another test was laid down by the Supreme Court to determine a question like the one before us in the case of *Tungabhadra Industries Ltd.* [1960] 11 S.T.C. 827 (TI). It was observed by their Lordships at page 835 :

There is no use to which the groundnut oil can be put for which the hydrogenated oil could not be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used. Similarly we consider that hydrogenated oil still continues to be 'groundnut oil' notwithstanding the processing which is merely for the purpose of rendering the oil more stable.

25. On this authority of the Supreme Court it can safely be said in the instant case that ornamentation of glass bangles merely results in bringing into existence a different variety of glass bangles, but not a commercially different commodity. The use to which glass bangles are put in this country is well known. They are primarily worn by womenfolk as an article of personal decoration. All varieties of glass bangles be they plain, colored or ornamented serve the same purpose.

26. As a result of the foregoing discussion I am of opinion that ornamented glass bangles cannot be regarded as a commodity distinct and apart from plain glass bangles for the purposes of Section 3-A of the Act. They are merely two varieties of glass bangles and the distinction sought to be made by the State, in the impugned notification is artificial and is, therefore, unauthorized. In the circumstances I must hold that the impugned notification is ultra vires being beyond the ambit of Section 3-A of the Act.

27. I, therefore, allow the writ petition, declare the impugned notification to be ultra vires and issue a writ of certiorari quashing the assessment order for the year 1965-66. In the circumstances, however, I would make no order as to costs.

By the court - The petition is allowed. A writ in the nature of certiorari shall issue quashing the assessment order dated 18th November, 1966, made against the petitioner for the assessment year 1965-66. There is no order as to costs.

Petition allowed.

<sup>8</sup>[1967] 19 STC 24 (SC)