

M/s. Triveni Glass Ltd. represented by its Deputy General Manager (Sales and P.R.) Shri R.K. Sinha Vs. Commissioner of Trade Tax, U.P.

Civil Appeal No. 3773 of 2011
2023-10-09 | Aravind Kumar, J.
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Full judgment text

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[Civil Appeal No. 3773 of 2011]

M/s. Triveni Glass Ltd. Vs. Asstt. Commissioner (Assessment) Trade Tax

[Civil Appeal No. 5914 of 2023]

M/s. Triveni Glass Ltd. Vs. Commissioner of Trade Tax, U.P

[Civil Appeal Nos. 5965-5966 of 2023]

Aravind Kumar, J.

1. The point that arises for our consideration is whether "tinted glass sheets" manufactured by the appellants is liable to be taxed as "goods or wares made of glass" under the Notification No.5784 dated 07.09.1981 being Entry No.IV or as unclassified item.

2. In all these appeals, the above common question of law arises for our consideration. The facts in brief which are common in Civil Appeal No.3773 of 2011 relates to the tax assessment years 1996-97, Civil Appeal No.5914 of 2023 relates to the notice issued for reassessment for the tax assessment years 1992-93 to 1996-97 and whereas Civil Appeal Nos.5965-66 of 2023 relates to the tax assessment years 1998-99 and 2003-04 respectively.

3. The appellant deals with manufacturing and sale of sheet glass, tinted glass, coloured glass, figured glass, void glass, wired glass, float glass and neutral glass. After taking note of the books of accounts tendered during the course of the assessment proceedings the assessing officer opined after enquiry that tinted glass has been manufactured by assessee in a separate unit and the process adopted for its manufacture is different from manufacture of sheet glass.

Assessing Officer has further opined in his order that raw materials used in manufacture of tinted coloured glass are cobalt oxide, carbon oxide, iron oxide etc. besides those used in the manufacture of sheet glass. Assessing Officer has further held that the transparency and density of tinted coloured glass is different from the simple glass surface as also solar radiation on the absorption capacity of tinted coloured glass being more than that of the simple sheet glass. He further concludes in his assessment orders that in the ordinary and common parlance the tinted glass is not recognised or understood as sheet glass.

4. Hence, the assessing officer imposed tax @15% on the sale of the goods by holding that said goods cannot be included in the category of plain glass but under the category of "all goods and wares made of glass" as reflected in the Notification No.5784 dated 07.09.1981. The appeals filed against the said assessment orders came to be dismissed and the imposition of tax @15% came to be upheld.

The appellate authority also relied on the meaning of the word "goods" as reflected in circular dated 28.09.1993 for arriving at a conclusion that only plain glass sheet has been taken as unclassified item and not the goods in question. The assessee was unsuccessful before the Trade Tax Tribunal. The contentions raised and grounds urged contrary to the findings recorded by the assessing officer and the appellate authority also did not find favour by the tribunal. In other words, the orders of the authorities came to be affirmed by the tribunal.

The assessee pursued its grievance before the High Court by filing a revision petition contending that plain glass panes which are commercially known as sheet glass includes sheet glass both in tinted and non-tinted

forms and the entry "plain glass panes" cannot be interpreted to exclude the tinted glass from its purview. The contention of the appellant that manufacturing of tinted/coloured glass is the same as that of uncoloured glass also did not find waiver by the tribunal. Hence, the revision application/petition came to be dismissed.

5. The assessment orders which related to the tax assessment years 1996-97, 1998-99 and 2003-04 were the subject matter of the appeals and revision as noticed hereinabove. However, for the tax assessment years 1992-93 to 1996-97 notices under Section 21(2) came to be issued stating thereunder that said goods were liable to be taxed @15% while tax @10% inclusive of surcharge had been deposited. Hence, appellant was called upon to showcase as to why sales tax @15% should not be levied on the sale of the said goods. The notice issued for the tax assessment year 1996-97 came to be adjudicated and an assessment order came to be passed on 12.9.2002 which is the subject matter of Civil Appeal No. 3773 of 2011.

The notices demanding tax @15% for the tax assessment years 1992-93 to 1996-97 came to be challenged in Writ Petition No. 283 of 2001 before the High Court of judicature at Allahabad which writ petition came to be dismissed in the light of said issue having already been laid to rest in appellant's case itself, in the light of assessment order for the tax assessment year 1996-97 having been passed by rejecting the similar contentions. Hence, in all these appeals the common question of law has arisen and as such they are taken up together for consideration, adjudication and determination thereof.

6. We have heard the arguments of Shri S.K. Bagaria, learned senior counsel appearing on behalf of the appellant and Shri R.K. Raizada, learned senior counsel appearing for the respondent.

7. Shri S.K. Bagaria, learned senior counsel appearing for the appellant-assessee has contended that tinted glass is also sheet glass and as such attracts 10% tax and not 15% as claimed by the revenue. He would contend that the only difference between both the glasses is colour. He would urge that tinted glass and simple glass are same commodities and both do not fall under the category of "goods and wares made of glass".

By placing reliance on several judgments noted hereinbelow he would submit that tinted glass is glass in its primary sense and no material difference in the manufacturing process of tinted sheet glass and plain glass exists. He would elaborate his submissions by contending that tinted glass is liable to be excluded as it is nothing but "plain glass panes" and he drew our attention to the dictionary meaning of the word "plain" and "panes" to contend that there is no distinction between these two commodities. He submits that adding of colour will not take away the tinted glass sheet out of the ambit of exclusion clause of Entry No. 4 of Notification No.5784 dated 07.09.1981.

8. He would rely upon the description of the expression "glass" and "glass sheet" given in Indian Standard Specification for Flat Transparent Sheet Glass (Third Revision) March, 1988 to substantiate his contention. He would also submit that the revenue has failed in its attempt to discharge the burden and demonstrate that a particular item falls in a particular entry. He would submit that in the earlier assessment year the assessing authority itself had treated the "tinted glass sheet" as plain glass sheet and as such for the assessment year in question it should be accordingly treated.

9. In these factual circumstances the recourse to tax by treating the commodity in question as falling within the residuary entry has to be resorted to is also his contention. In support of his submissions, he has relied upon the following judgments:

(i) Atul Glass industries (Pvt.) Ltd vs Collector of Central Excise And Hindustan Safety Glass Works Ltd. Vs Union of India & Ors. (1986) 3 SCC 480

(ii) Gujarat Steel Tubes Ltd. And Ors. VS State of Kerala and Ors. (1989) 3 SCC 127

(iii) Geep Flashlight Industries Ltd. Vs Union of India & Ors. (2002) 9 SCC 545

(iv) Brindavan Bangle Stores and Ors vs Asstt. Commissioner of Commercial Taxes and Another. (2000) 1 SCC 674

(v) State of Jharkhand and others Vs LA Opala R.G. Limited. (2014) 15 SCC 136

(vi) M/s. Indo International Industries Vs Commissioner of Sales Tax. Uttar Pradesh. (1981) 2 SCC 528

(vii) Commissioner of Sales Tax, Madhya Pradesh Vs Triveni Sheet Glass Works Ltd. And Others (1989) SCC Online MP 346: (1990) 76 STC 308 (FB)

- (viii) Commissioner of Sales Tax. Delhi Administration. Vikas Bhawan, New Delhi Vs Baluja Glass Company 1979 SCC Online Del 300: (1980) 46 STC 17
- (ix) Commissioner of Sales Tax Vs Mohd. Ayub & Sons 1981 SCC Online All 971: (1982) 50 STC 187
- (x) HPL CHEMICALS LTD. Vs Commissioner of Central Excise, Chandigarh (1997) 2 SCC 677
- (xi) U.P. Glass Works Ltd. Vs Commissioner, Sales Tax. UP, Lucknow. 1973 SCC Online All 422: (1973) 32 STC 252 : 1973 Tax LR 2589
- (xii) Commissioner. Sales Tax, U.P. Lucknow Vs Banaras Bead Manufacturing Co., Varanasi 1968 SCC Online All 380: (1970) 25 STC 100
- (xiii) Jalal Plastic Industries And Ors. vs Union of India And Ors. 1981 (8) ELT 653
- (xiv) Commissioner Of Sales Tax vs Dawoodbhoy M. Tayabally (1975) 36 STC 291
- (xv) Nirlex Spares (P) Ltd. Vs Commissioner of Central Excise (2008) 2 SCC 628
- (xvi) State of Uttar Pradesh & Others vs. Aryaverth Chawal Udyog & Others (2015) 17 SCC 324
- (xvii) Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company & Ors. (2018) 9 SCC 1

10. Per contra, Shri R.K. Raizada, learned senior counsel appearing for the respondent state would support the orders passed by the authorities and the High Court and prays for dismissal of the appeals.

Findings Recorded by The High Court

11. The learned High Court before whom grounds as urged by Shri S.K. Bagaria, learned senior advocate, appearing for the assessee had been urged was of the opinion that six (6) questions were required to be answered and accordingly framed the following six (6) questions:

- (i) Whether the entry "All goods and wares made of glass". excludes plain glass panes and treated the same as unclassified item, the Trade Tax Tribunal and lower authorities were justified to tax tinted/plain glass panes as declared commodity?
- (ii) Whether in view of common parlance as well as user of the tinted/coloured glass panes and plain glass panes are identical, in spite of that the tax has been imposed on the coloured / tinted glass panes as declared commodity instead of unclassified item? (iii) Whether plain glass panes does not cover tinted/coloured glass panes?
- (iv) Whether once the entry plain glass panes is specifically excluded from the entry "All goods and wares made of glass" the authorities were not justified in imposing tax on plain glass panes (coloured and tinted glass panes) as goods made of glass wares/
- (v) Whether in view of the fact that by mixing inch of colours no new commercial commodity comes into existence as tinted/coloured glass panes is a plain glass panes, still the tax can be imposed as declared commodity instead of unclassified item?
- (vi) Whether in any view of the matter, the order passed by the Trade Tax Tribunal is justified?

12. The High Court has noted that authorities had taken note of the fact that during survey conducted through Special Investigation Branch Unit, Allahabad, it was noticed that manufacturing process adopted for manufacturing of tinted sheet was different or distinct from the manufacturing process adopted for manufacture of glass sheet and it was also noticed that the tinted glass sheet was manufactured in a separate unit.

The High Court also noted that authorities had noted that density and transparency of the tinted colour sheet glass is different from that of ordinary sheet glass and the solar absorption power of tinted coloured glass sheet is much more than plain sheet glass and in the market or in the common parlance 'tinted glass sheet' is not treated as plain sheet glass.

Our Findings

13. The tug of war between the assesses and the revenue in these appeals revolves around the plea of assessee that tinted glasses manufactured by it falls under clause (c) of sub-section (1) of Section 3A namely residuary clause and as such tax is to be levied @ 10%; whereas revenue is contending that it

would fall under Entry No.4 of the notification No.5784 dated 07.09.1981 which Notification has been issued in exercise of the power conferred under clause(d) of Sub-section (1) of Section 3A of the Act. It is in this background, the rival contentions requires to be examined and it would be apt and appropriate to extract Section 3A of U.P. Trade Tax Act, 1948. It reads as under:

"Section 3-A: Rates of tax

(1) Except as provided in Section 3-D, the tax payable by a dealer under this Act shall be levied:-

(a) on the turnover in respect of "declared goods", at the point of sale to the consumer at the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956, or where the State Government, by notification, declares any other single point or a lesser rate, at such other point or at such lesser rate;

(b) the turnover in respect of such goods), other than the goods referred to in clause (a), at such point and at such rate, not exceeding fifty per cent, as the State Government may, by notification, declare, and different points and different rates may be declared in respect of different goods

(c) on the turnover in respect of goods, other than those referred to in clause (a) or clause (b), at the point of sale by manufacturer or importer at the rate of ten percent.

(2) Every notification made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than fourteen days, extending in its one session or more than one successive sessions; and shall, unless some later date is appointed, take effect from the date of its publication in the Gazette subject to such modifications or annulments as the two Houses of the Legislature may during the said period agree to make, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said modification or annulment.

(3) Where the State Government has declared any point or rate at which the tax payable by a dealer under the Act be levied under clause (b), clause (c), clause (c-1), clause (d) or clause (e) of sub-section (1) as existed immediately before the commencement of the Uttar Pradesh Trade Tax (Second Amendment) Act, 2000 and such declaration in force on such commencement, such rate or point of tax shall continue to be in force after such commencement, until modified or rescinded."

14. A perusal of sub-section (1) of Section 3-A would indicate that the tax payable by the dealer under the Act shall be levied under clause (a) on the turnover in respect of "declared goods", at the point of sale to the consumer at the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956, or where the State Government, by notification, declares any other single point or a lesser rate, at such other point or at such lesser rate; under clause (b) on the turnover in respect of such goods, other than the goods referred to in clause (a), at such point and at such rate, not exceeding fifty per cent, as the State Government may, by notification, declare, and different points and different rates may be declared in respect of different goods; under clause (c) on the turnover in respect of goods, other than those referred to in clause (a) or clause (b), at the point of sale by manufacturer or importer @10 percent.

15. The Notification No. ST-2-5784/X-10(1)-80 dated 7/9/1981 issued in exercise of the power conferred under clause(d) of Sub14 section (1) of Section 3A of the Act specifies that under Entry No. 4 reads as under:

"4. All goods and glass wares made of glass but not including plain glass panes optical lenses, hurricane lantern, chimneys bottles and phials, glass beads, clinical syringes, Therma Meters and scientific apparatus and instruments made of glass."

Thus, on a plain reading of the above entry it would leave no manner of doubt that all goods and wares made of glass would fall within the definition of the said entry or in other words, all goods and wares made of glass would fall within Entry No.IV of the aforesaid notification and thus attract a duty @15 %. The exclusion of plain glass panes, optical lens as indicated therein would fall within the residuary clause attracting 10 % tax.

16. In the aforesaid background, it requires to be examined in the facts that has unfolded in the present case as to whether the tinted glass sheet is to be treated as equivalent to plain glass sheets/panes or not.

17. Tracing the history of the entry can be noticed as under:

There is no dispute to the fact that earlier the entry was "glassware" alone and the said entry was subsequently amended by adding word "all goods" within its scope and ambit and this widening of the expression would indicate the intention of the legislature to include all goods and wares of glass unless excluded, in other words the intention of the legislature is explicitly clear to include in its ambit any goods and wares made of glass. The meaning of the word "of" also acquires the significance.

The intention of the legislature of using this expression "of" would reveal the purpose and it would be the endeavour of the court to put itself in the chair of the legislature and presume that the legislature was reasonable as held by this Court in *Mauri Yeast India Private Limited Vs. State of U.P.* (2008) SCC 680 wherein the expression "chemicals of all kinds" was interpreted. It is well settled principle that the word used in a statute must take its colour from the object it seeks to achieve and also by considering the words with which it is associated in the context.

18. In the matter of *Geep Flashlight Industries Ltd. Vs. Union of India and others* (2002) 9 SCC 545, this Court was of the view that canon of construction commands that commodity commonly known in the market would be the basis for determination of its entry. It came to be further held:

"5. By a catena of decisions it is settled law that an expression used in a taxing statute for describing a commodity must be given the meaning which is generally given to it by a person in the trade or in the market of commodities and should be interpreted in the sense the person conversant with the subject-matter of the statute and dealing with it would attribute to it. (See *Ramavatar Budhaiprasad v. Asstt. STO* [(1961) 12 STC 286 : AIR 1961 SC 1325].) The High Court approached the matter from this angle and reached the correct conclusion that the expression "articles made of plastics" used in Tariff Item 15-A(2) does not cover such articles which are not directly made from the material indicated in sub-item (1) but are made from articles made out of such material."

19. Reiterating the position with regard to interpretation of provisions in fiscal statutes and adherence to the principle of popular meaning as understood in their common and popular ex-parlance in the matter of *State of Jharkhand and others Vs. LA Opala RG Limited-* (2014) 15 SCC 136 it came to be held:

"22. It is a settled law that in taxing statutes the terms and expressions must be seen in their common and popular parlance and not be attributed their scientific or technical meanings. In common parlance, the two words "type" and "form" are not of the same import. According to the Oxford Dictionary, whereas the meaning of the expression "types" is "kind, class, breed, group, family, genus"; the meaning of the word "form" is "visible shape or configuration of something" or the "style, design, and arrangement in an artistic work as distinct from its content".

Similarly, Macmillan Dictionary defines "type" as "a group of people or things with similar qualities or features that make them different from other groups" and "form" as "the particular way in which something appears or exists or a shape of someone or something". Therefore, "types" are based on the broad nature of the item intended to be classified and in terms of "forms", the distinguishable feature is the particular way in which the items exist. An example could be the item "wax". The types of wax would include animal, vegetable, petroleum, mineral or synthetic wax whereas the form of wax could be candles, lubricant wax, sealing wax, etc."

20. In the instant case, assessee has placed reliance on the full bench Judgment of the High Court of Madhya Pradesh in the matter of *Commissioner of Sales Tax, Madhya Pradesh Vs. Triveni Sheet Glass Limited and others*, (1990) 76 STC 308 (Full Bench)=1989 SCC online MP 346 whereunder the issue relating to entry of glass sheets had come up for consideration namely whether glass sheets falls within the ambit of the expression "goods made of glass and glassware". This judgment which was relied upon under the impugned order came to be distinguished as under:

"Then, reliance was placed on *CST, Madhya Pradesh Vs Triveni Sheet Glass Works Limited* (1990), 76 STC 308, a full bench decision of the Madhya Pradesh High Court. Therein the question was with regard to the taxability of glass sheets. The relevant portion of the Entry was "goods made of glass and glasswares". The full bench in para 7 noticed that undoubtedly there is distinction between glass, goods or articles made of glass. After doing so, it quoted a passage from the order of the Board wherein it was held by the Board that glass sheet, is glass simplicitor.

Glass sheet is, therefore, according to the Full Bench a primary product which can be used for producing the goods or articles made of glass and it cannot be equated with goods or articles made of glass. The Full Bench expressed its dissent with the decision reported in Commissioner of Sales Tax, Madhya Pradesh, Nagpur v. Mohanlal Ramkisan Nathani (1955) 6 STC 136 and Tribuwandas Golabchand and Brothers, Nagpur V. State of Maharashtra (1965) 16 STC 452 (Bombay) and CST Vs Bombay Glasshouse (1986) 63 STC 350 (M.P.).

The Full Bench was of the opinion that in these decisions, it was not taken into account that the glass sheet is common parlance is glass simplicitor" and glass sheet is a primary product used for producing articles of goods made of glass. Glass sheet is a primary product." This distinguishes the case from the facts of the present case."

21. This Court in Atul Glass industries Pvt. Ltd. Vs. Collector of Central Excise, (1986) 63 STC 322 has held the test commonly applied to determine whether an article after subjecting to manufacturing processes becomes a different article or remains the same is: how is the product identified by the class or section of the people dealing with or using such product. It came to be held:

"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 [(1979) 1 SCC 82 : 1979 SCC (Tax) 38 : AIR 1979 SC 300 : (1978) 42 STC 433] . It is generally by its functional character that a product is so identified. In CST, 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) 4 SCC 71 : 1980 SCC (Tax) 548 : AIR 1980 SC 1552 : (1980) 3 SCR 1109] which was a case under the sales tax law: (SCC pp. 75-76, para 7)

"In determining the meaning or connotation of words and expressions 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. CST, Uttar Pradesh [(1981) 2 SCC 528 : 1981 SCC (Tax) 130 : AIR 1981 SC 1079 : (1981) 3 SCR 294] 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."

In the aforesaid Judgment, the question that arose for consideration was under what tariff item 'glass mirror' would fall, and glass screens fitted in motor vehicles as wind screens, rear screens, window screens would fall under which competing tariff item. Adjudicating this question, this Court held that glass sheet

after successive stage of processing undergoes a complete transformation to become a glass mirror and a different commercial product with a reflective surface.

It was further held, after this process glass sheet is reduced to a mere medium and if any part of the coating is scratched and removed that particular area of the glass mirror will cease to be a glass mirror. It was further held that said commodity is referred to as a glass mirror only because the word "glass" which is descriptive of the mirror and basis or fundamental character of the article lies in its being a mirror cannot be regarded as glass. Thus, the legislative intent is clear as regards the product, namely, the primary product is not coupled with goods and articles made of that primary product.

Thus, it would emerge from the test commonly applied to determine whether an article after subjecting it to manufacturing process becomes a different article or remains same and as held in the aforesaid Judgment it will have to be examined as to how the product is identified by the class or section of people dealing with or using the product. This test acquires significance particularly when the statute does not contain any definition and by its functional character a product is so identified.

22. In fact, the High Court has noticed this fact and has recorded the following finding:

"The said issue can be resolved from the point of view as to how the persons who are in the business understands the meaning of plain glass sheets in commercial words, as noticed by the tribunal, plain glass sheets means colourless glass or having a colour of water. The tribunal has noticed that a dealer of glass sheet, is not required to exhibit all kinds of sheet glass including coloured one when a customer demands plain glass sheet. Unless a coloured glass is asked for, a dealer exhibits the (uncoloured) plain glass sheet.

The said finding of the tribunals essentially a finding of fact. In common parlance also, in window and doors, plain glass sheet i.e. uncoloured glass sheets are used generally These glass sheets are also used as table top, in showcase and also as racks in Almirah. It may be noted that only plain glass sheets which is not coloured is used generally."

23. Now, we proceed to note the simple dictionary meaning assigned with regard to "plain glass panes" in order to examine the claim of assessee to extend the meaning assigned to "plain glass sheet" to "tinted glass sheet."

PLAIN:

Webster's Encyclopaedic Unabridged Dictionary 1989

Edition defines "Plain" as-

"Plain (plan) adj. 1. clear to distinct to the eye or ear: a plain trail to the river, to stand in plain view. 2. one's meaning plain, a dislike of the subject that was plain. 3. conveying the meaning clearly and simply: easily understood; plain 4. downright; sheer; utter; plain folly, plain stupidly. 5. free from ambiguity or evasion; candid; outspoken: the plain truth of the matter. 6. without special pretension, superiority elegance, etc.; ordinary: plain people. 7. not beautiful: physically unattractive or undistinguished: a plain face; a childhood fear that she would be plain. 8. without intricates or difficulties. 9. ordinary, simple, or unostentatious: Although she was a duchess, her manners were attractively plain. 10. with little or no embellishment, decoration, or enhancing elaboration: a plain blue suit. 11. without a pattern, figure, or device: a plain fabric. 12. not rich, highly seasoned, or elaborately prepared, as food: plain, fresh, substantial fare; a plain diet. 13, flat or level: plain country. 14. unobstructed, clear or open, as ground, a space, etc. 15. Cards, being other than a face card or a trump. - adv. 16. clearly and simply: He's just plain stupid - n. 17. an area of and not significantly higher than adjacent areas and with relatively minor difference in elevation, commonly less than 500 feet, within the area. 18. the Plain, Fr. Hist. (in the National Assembly) the loosely organised party of moderate republicans: so called because its members occupied the lowest seats or benches. Cf. mountain (def. 4). 19. The plains. See Great Plains. [ME OF <L plan (us) flat, level, plan (um) flat country)- plan ly, adv. - plain ness, n.

In the Compact Oxford Reference Dictionary audited by Catherine Soanes the word "Plain" means "1. simple or ordinary 2. without a pattern 3. unmarked 4. easy to see or understand."

In the Dictionary by Webster the word "plain" means as follows:

"(plein) 1. adj. easy to see or understand simple, not embellished or complicated absolute, complete, plain madness (of food) unelaborated, not having unusual or spicy ingredients bluntly frank unsophisticated

lacking physical beauty, but not ugly 2.n. a large expanse of level, open country 3. adv. Manifestly, it's just plain wrong clearly, candidly, she told him plain [KO F. fr.L]"

PANE:

"Webster's Dictionary defines "Pane" as- Pane - a single sheet of glass in a window, greenhouse etc. a division of a window etc, containing such a sheet of glass in a frame a flat side or edge of a many-sided object."

"Concise Oxford Dictionary defines "Pane" as - a single sheet of glass in a window or door. 2. A rectangular division of a chequered pattern etc.."

24. A plain reading of the above definitions would not detain us for too long to brush aside the contentions of the learned senior counsel appearing for the appellant-assessee, inasmuch as, "panes" means glass sheets in small sizes used in doors and windows and they cannot be treated as glass sheets as panes or made out of glass sheets by cutting it into different sizes.

25. Yet another contention was raised that commodity remains the same even after the manufacturing process and applying the said principle to the product on hand, namely tinted glass sheets would continue to be the genus of the species namely "plain glass panes" by relying upon Gujarat Steel Tubes Ltd. V. State of Kerala (1989) 3 SCC 127 and Maqsood Mohammad Vs. State of Uttar Pradesh and Another (1978) 41 STC 324.

Both the Judgments are distinguishable on facts, and reasoning adopted under the impugned order is just and proper for reasons more than one; firstly in Gujarat Steel Tubes matter (supra) it was noticed that the steel tube was galvanized and by virtue of the same, it did not cease to be a steel tube inasmuch as its structure or its function is not altered and it remained as a steel tube.

Whereas in the instant case the tinted glass sheet during the process of manufacture has undergone a change and as noticed by the authorities it has more radiation absorption capacity and is also different in its transparency and density than a plain glass sheet or in other words the commodity did not remain the same after the manufacturing process.

Secondly, in Maqsood Mohammad matter (supra) it was noticed that after the manufacturing process the product "kala namak" remained as an edible salt or in other words it was a species of salt and as such it was held exempted from tax and cannot be taxed under Section 3A of U.P. Sales Tax Act, 1948. The analogy noted hereinabove to distinguish Gujarat Steel Tubes Limited (supra) is squarely applicable to distinguish the principles enunciated in Maqsood Mohammad case, which was on facts obtained therein.

26. When the assessee is contending that an item/product falls under the residuary category, necessarily the burden is on the assessee to prove the said fact and in the instant case, the business premises of the appellant was inspected by Special Investigation Branch of the Department and it was revealed that "tinted glass sheet" was being manufactured through a different process. The process so adopted has been succinctly explained in the Assessment Order to the following effect:

"An intensive inquiry XXX Rs. 9,47,28, 446.00. In the inquiry held by Allahabad Unit, this fact has come to the light that the tinted coloured glass is manufactured by the trader in a separate unit and the raw material used in its manufacture is also different from the raw material used in the manufacture of sheet glass. That is the raw materials used in the manufacture of tinted coloured glass are cobalt oxide, carbon oxide, iron oxide etc. besides those used in the manufacture of sheet glass.

A specific process is adopted for its manufacturing. The transparency density of tinted coloured glass is different from the simple glass surface. The solar radiation absorption capacity of tinted coloured glass is more than that of the simple sheet glass. In ordinary common parlance of the market the tinted glass is not understood as sheet glass. Therefore, the plain sheet of tinted coloured glass cannot be deemed as sheet glass. After apprising XXX tax liability shall be determined."

In this background, when the contention of Mr. Bagaria, learned senior counsel, appearing for the appellant contending that "plain glass panes" would include 'tinted glass sheet' is examined, same has to be rejected as the general meaning of "glassware" could not have been attached to 'tinted glass' sheet or the exclusion would have been specific in Entry (IV) itself. In our considered opinion, the expression "all the goods and wares made of glass" occurring in Notification dated:07.09.1981 must be taken to refer to all articles of glass except those specifically excluded in the entry itself.

27. It would not be out of context or in other words it would be apposite to refer to the judgment of this Court in the matter of Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer - (1962) 1 SCR 279 wherein challenge to the imposition of sales tax on beetle leaves by the revenue came to be upheld by arriving at a conclusion that the legislature by using two distinct and different items that is item 6 "vegetables" item 36 "beetle leaves" had indicated its intention. It was held that the word "vegetables" in taxing statutes is to be understood as in common parlance that is denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. It was further held:

"3. The Schedule was amended. But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subjectmatter with which the statute is dealing would attribute to it". It is to be construed as understood in common language; Craies on Statute Law, p.153 (5th Edn.). It was so held.

28. This Court examined in M/s. Indo International Industries vs Commissioner of Sales Tax, Uttar Pradesh (1981) 2 SCC 528 almost similar issue namely whether hypodermic clinical syringes could be regarded as "glass ware" under Entry 39 of First Schedule of UP Sales Tax Act, 1948 and negated the plea of the assessee by opining that in taxing statutes, words and phrases must be construed as understood in popular or commercial parlance and not technically. It came to be further held:

"5. Having regard to the aforesaid well settled test the question is whether clinical syringes could be regarded as "glassware" falling within Entry 39 of the First Schedule to the Act? It is true that the dictionary meaning of the expression "glassware" is "articles made of glass" (see Webster's New World Dictionary). However, in commercial sense glass ware would never comprise articles like clinical syringes, thermometers, lactometers, and the like which have specialised significance and utility.

In popular or commercial parlance a general merchant dealing in "glassware" does not ordinarily deal in articles like clinical syringes, thermometers, lactometers, etc. which articles though made of glass, are normally available in medical stores or with the manufacturers thereof like the assessee. It is equally unlikely that consumer would ask for such articles from a glass ware shop.

In popular sense when one talks of glass ware such specialised articles like clinical syringes, thermometers, lactometers and the like do not come up to one's mind. Applying the aforesaid test, therefore, we are clearly of the view that the clinical syringes which the assessee manufactures and sells cannot be considered as "glass ware" falling within Entry 39 of the First Schedule of the Act."

29. In the aforesaid background, we are of the considered view that neither the dictionary meaning nor the common parlance theory would come to the rescue of the appellant. The arguments canvassed by the learned senior counsel with regard to flat transparent sheet glass as indicated in the Indian Standards Specification has also received the attention of the High Court and has been dealt with under the impugned order and distinguished it on facts in favour of the revenue, and rightly so, for the reasons indicated thereunder which we are of the considered view is in tune with the settled principles of law noted hereinabove and thereby impugned order does not call for our interference.

30. There is no vagueness in the notification dated 07.09.1981 and the entry No. 4 is clear and unambiguous namely it has brought within the sweep "all goods and wares made of glass" exigible to tax but not including "plain glass panes" and the exemption being the creation of the statute itself, it has to be construed strictly and even if there is any vagueness in the exemption clause must go to the benefit of the revenue. [(2018) 9 SCC 1 paras 36 to 38]

31. For the reasons indicated hereinabove, we are of the considered view that the impugned judgments would not call for interference and accordingly the appeals are dismissed.

The notice for reassessment dated 08.02.2001 issued in Civil Appeal No.5914 of 2023 (Special Leave Petition(c) No.29516 of 2013) for the assessment years 1992-93 to 1996-97 is upheld. No order as to costs.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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