

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4617 OF 2000

COMMNR.OF CENT.EXCISE & CUSTOMS, GUJARAT

Appellant (s)

VERSUS

M/S. PAN PIPES RESPLENDENTS LIMITED

Respondent(s)

(With appln(s) for stay and with office report )

Date: 01/12/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant(s)

Mr. Mohan Parasaran, ASG

Mr. Rupesh Kumar, Adv.

Mr. P. Parmeswaran, Adv.

For Respondent(s)

Mr. Ramesh Singh, Adv.

Ms. Inkle Barooah, Adv.

Mrs. Rakhi Ray, Adv.

Ms. Bina Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal is dismissed in terms of the signed order

with no order

as to costs.

Singh)

(K.K. Chawla)

(Kanwal

aster

Court Master

Court M

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4617 OF 2000

COMMNR.OF CENT.EXCISE & CUSTOMS, GUJARAT ..Appellant (s)

VERSUS

M/S. PAN PIPES RESPLENDENTS LIMITED ..Respondent(s)

O R D E R

The present Appeal has been filed by the Commissioner of Central Excise and Customs under Section 35 (L)(b) of the Central Excise 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 Resplendents Ltd. (for short "The Respondent").

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.

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 (1998) 2 SCC 32, 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."

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.

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.

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.

.....J.

(Ashok Bhan)

.....J.

(C.K. Thakker)

New Delhi;

December 01, 2005.