Union Of India & Ors. Etc vs J.G. Glass Industries Ltd. Etc on 9 December, 1997

Equivalent citations: AIR 1998 SUPREME COURT 839, 1998 (2) SCC 32, 1998 AIR SCW 573, 1997 (7) SCALE 548, (1998) 1 KER LT 22, (1998) 96 TAXMAN 29, (1998) 1 SUPREME 60, (1997) 7 SCALE 548, (1999) 114 STC 387, (1998) 78 ECR 761, (1998) 97 ELT 5, (1998) 143 TAXATION 185

Author: M. Srinivasan

Bench: M. Srinivasan

PETITIONER:
UNION OF INDIA & ORS. ETC.

Vs.

RESPONDENT:
J.G. GLASS INDUSTRIES LTD. ETC.

DATE OF JUDGMENT: 09/12/1997

BENCH:
M.C. SEN, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T SRINIVASAN, J.

` The common question which arises for decision in these two appeals and Special Leave Petition is whether printing on glass bottles amounts to manufacture within the meaning of Section 2 (f) of the Central Excise Act 1944.

2. It is convenient to set out the facts in each case separately before consider the aforesaid question.

3. The appellant in Civil Appeal No. 767 of 1991 have a factory for manufacturing glass and glasswares falling under 1.1. 23 of the Central Excise Tariff.

Till 1983 they were manufacturing and supplying plain glass bottles to customers. In 1983 they filed an application before the Assistant Collector, Central Excise, Saharanpur enclosing a revised layout of the factory in substitution of the existing plan. Under the revised plan, the premises in which the manufacturing operation of glass and glassware was undertaken was segregated from the premises in which the machinery for printing of glass bottles with ceramic colour was to be installed for carrying on the printing operation. The Superintendent, (Central Excise) approved of the revised plan. The appellants commenced the process of printing of bottles in the separate demarcated Unit for which no Excise License was taken. The said demarcated unit is situated within a shed enclosed by walls separate from the main factory which is licensed for manufacturing glass and glassware. The Range Superintendent of Central Excise issued a directive vide letter dated 29.6.1983 that the appellant shall into remove any printed bottles without payment of Central Excise duty on the enhanced value after including the expenditure incurred on printing/decorating. That was challenged by appellants on appeal before the Collector (Appeals) who set aside the directive and directed the Assistant Collector to pass a speaking order after complying with the principles of natural justice. After a show cause notice and a reply thereto, the Assistant Collector passed an order on 23.9.1983 that assessable value of glass bottles should include the cost of decorating the same with ceramic colours, On appeal the Collector confirmed the same by his order dated 3.3.1984. The Tribunal dismissed the appeal preferred by the appellants by its order dated 26.10.1990. It is that order which is under challenge in this appeal.

4. Though the Tribunal observed that the Superintendent of Central Excise was not competent to approve the revised ground plan, proceeded to discuss the question formulated above on the footing that the Unit wherein the decoration of glass bottles in being carried out is separate from the factory manufacturing the said bottles. The following passage in the order of the Tribunal is relevant in this regard:

> "Admittedly, the ACL Unit is located in the enclosed space with an opening on the main road apart from the gate of the factory licensed for the manufacture of glassware. The shed in which the ACL Unit is located, was also excluded from the lay out of the factory. From the above, it follows that the ACL. Unit, which was carved out of the old premises is a space covered by walls and is adjunct to the principal premises i.e. the licensed premises."

Again the Tribunal has observed in Para 20 of its order that "admittedly the plain bottles are manufactured in the main premises and the printing and decoration is done in the premises adjunct to it".

5. It is on the above factual premise the question stated above which was formulated by the Tribunal itself has to be considered. The Tribunal has proceeded to hold that printing and decoration would amount to manufacture within the meaning of Section 2 (f) of the Act.

6. In Civil Appeal No. 2882 of 1993 the appellant is the Union of India. The respondent in that appeal is none other than the appellant in Civil Appeal No. 767 of 1991. That appeal arises out of a claim for refund made by the respondents therein on the ground that they had paid excise duty on the charges incurred for printing of glass bottles which did not form part of manufacturing process and therefore they were entitled to get refund of the said duty. They had paid the duty on the price of the bottles as supplied to the customers as per the approved Price List No.37 which included the printing charges. The claim for refund was accepted by the Assistant Collector of Central Excise but rejected by the Collector. The assessee filed a writ petition in the High Court of Bombay to quash the order of the Collector. A Division Bench of the High Court upheld the contention of the assessee and held that printing on the glass bottles cannot be included in the assessable value for the purpose of levy of excise duty. Aggrieved by the order of the Division Bench, the Union of India has preferred this appeal.

7. In so far as the factual position in this appeal is concerned, there is no dispute that the entire process including the printing on the bottles is carried out in one factory and the excisable goods supplied to the customers by the respondents are the printed bottles at the price set out in the approved price list inclusive of the printing charges.

8. In Special Leave Petition No. 8316 of 1994 the first respondent is a company which undertakes the process of decorating glass bottles at its factory at Chinehwad, Poona. The company purchases plain bottles from the manufacturers thereof including appellants in Civil Appeal No. 767 of 1991 and carries out the decoration and printing on such bottles as per the contracts entered into with its customers. The company had not taken any licence for carrying out that process within its premises on the ground that it was not a manufacturing process. The Superintendent of Central Excise detained the bottles and issued a shoe cause notice as to why excise duty should not be demanded, penalty should not be imposed and goods should not be seized. The respondents filed a writ petition in the High Court of Bombay challenging the said proceedings. The Division Bench of the High Court followed the judgment rendered in the earlier case of J.G. Glass Industries Ltd. and allowed the writ petition. Aggrieved thereby the Union of India has preferred the Petition for Special Leave. In so far as this case is concerned, there is no dispute regarding the fact the respondents are only carrying on the process of decoration and printing and have nothing to do with the manufacture of bottled as such.

9. The contention of the assessee is that printing and decorating bottles will not by any stretch of imagination amount to manufacture. It is argued that unless the process brings into existence a different commercial product, it cannot be said to be manufacturing process. In cannot be said to be manufacturing process. In short, the contention is that the plain bottles do not cease to be bottles by some logos or names being printed thereon. Reliance is placed on a judgment of this Court in Union of India Versus Delhi Cloth & General Mils 1963 Supp. (1) S.C.R. 586. Our attention is drawn to the following passage:

> "On a consideration of all these materials we have no doubt about the correctness of the respondents' case that the raw oil purchased by the respondents for the purpose of manufacture of Vanaspati does not become at any stage "refined Oil"

as is known to the consumers and the Commercial community. The first branch of Mr. Pathak's argument must therefore be rejected.

The other branch of Mr. Pathak's argument is that even if it be held that the respondents do not manufacture "refined oil" as is known to the market they must be held to manufacture some kind of "non essential vegetable oil" by applying to the raw material purchased by them, the process of neutralisation by alkali and bleaching by activated earth and/or carbon. 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 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 Vol.26, from American judgment.

The passage runs thus:-

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

10. In Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) Ernakulam versus M/s. Pio Food Packers 1980 Supp. Supreme Court Cases 174 this Court observed:-

> "....There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevelent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly manufacture s the end result of one more process through which the original commodity s made to pass. The nature and extent of process may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process sufferred, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity".

11. In Rollatainers Ltd. Versus Union of India 1994 (72) E.L.T. 793 (S.C.) the question arose with reference to the applicability of printing industry. The Notification specified the goods as "all

products of printing industry including newspapers and printed periodicals". The contention of the appellant was that printed cartons are a product of printing industry and as such exempt from duty under the Notification.

Rejecting that connection the Court said:

> "According to the appellant-company printed cartons are known and understood in the trade as products of the Printing Industry. The dominant activity in the manufacture of a printed carton is the printing activity and the cutting, creasing and gluing, if any, are only supplementary. It was further contended that the printed cartons have become a medium of advertising the product. It enhances the sale value of the goods. The art is chosen so manufacturer are highlighted. The appearance carton are of utmost importance and occupy the major time and expense in the manufacture of the carton. It was, therefore, finally contended that the printed carton are known the printing industry. Since that is how the printed cartons are understood in the common parlance, the appellant- company is entitled to the benefit of the Exemption Notification. ....The literature referred to by the appellant only shows that the printing industry has advanced to such an extent that one can print an almost anything such as glass, metal or synthetic base. Earlier the printing activity was primarily confined to printing of books, literature, newspaper and periodicals etc. The advanced printing industry covers a much wider field of activity than it did in the past. Can we, therefore, say that every material on which printing work is done becomes a product of the Printing work is done becomes a product of the Printing Industry? The answer has to be in the negative. An ordinary carton without any printing on it is a completed product and undisputedly the product of Packaging Industry.
>
> The question for our consideration is, does it cease to be the product of Packaging Industry as and when some printing is done on the said carton? We are of the view that to a common man in the trade and in common parlance a carton remains a carton whether it is a plain carton or a printed carton. The extreme contention that all products, on which some printing is done, are the products of the Printing Industry cannot be accepted. The Division Bench of the High Court has rightly rejected the contention on the following reasoning:
>
> "In our view, it would be an extreme proposition to hold that all products on which some printing is done is a product of the printing cloth would be a product of the printing industry and not of the textile industry. A metal can with printed material on it will similarly be a product of the printing industry and not of the packaging industry. The same can be said of card-board packet and even wooden boxes over which some printing is done to identify the goods or its manufacturer. In our view, the mere fact that something is printed on a product by itself does not make it a product of the printing industry. A carton is a carton and has only one use, namely of; packing a product to be sold in the market. The more fact that something is printed

on it does not change its essential nature or use.

> The learned Judges has observed that the end use of a product is immaterial. In the case of a carton the question does not arise, because it has only one use and therefore any distinction between its intermediate use and end use its unwarranted. In our view, the printed cartons are designed at times to make the product attractive for the purchaser, and at times to identify the goods and highlight its qualities, and at times to identify the manufacturer of the goods. All the same, the carton remains a carton and is used for the purpose of packaging".

....What is exempt under the Notification is the product of the "printing Industry". The "Product"

in this case is the carton. The carton into existence. Any amount of fancy carton. In the process of manufacturing the printed cartons, the card board has to be carton by using paste or gum. Simply because there are expensive prints on the carton such a printed carton would not become the product of the Printing Industry. It shall remain the product of the Packaging Industry.

12. The above ruling was followed in Collector of Central Excise, Bombay Versus Paper & Products Co. 1996 (88) E.L.T. 317 (S.C.) in which it was held that unwaxed printed paper cut into sheets and reels according to the needs of the customer for the purpose of being used as wrappers in packaging cannot be said to be a product of printing industry so as to attract the exemption Notification.

13. In Metagraphs Pvt. Ltd. Versus Collector of Central Excise, Bombay (1997) 1 S.C.C. 262 the appellant manufactured printed aluminium labels were printed on flatbed offset printing press and the printing was done on a deep offset printing plate. The labels were meant to be fixed to refrigerators, radios, air conditioners telephones etc. The Tribunal held that the printed aluminium labels were not products of printing industry and rejected the claim for exemption. The Division Bench of this Court reversed the decision of the Tribunal and followed the reasoning in Rollatainers Ltd.'s case (supra). After referring to the above case, the Bench said "...There this Court approved the test based on understanding of trade parlance/common parlance of a particular product. In the case on hand but for the printing, the aluminum label would serve no purpose and as seen above, it is the printing on the aluminium sheet, which communicates the message to the buyer that makes the sheet as a label, unlike a carton printed or plain which always remains a carton. The label announces to the customer that the product is or is not of his choice and his purchase of the commodity would be decided by the printed matter on the label. The printing of the label is not incidental to its use but primarily in the sense that it communicates to the customer about the product and this serves a definite purpose. This Court in Rollatainers case held that "what is exempt under the notification is the product" of the printing industry. The 'product' in this case is the carton. the printing industry by itself cannot bring the carton into existence". Let us apply this above formula to the facts of this case. The product in this case is the aluminium printed label. The printing industry has brought the label into existence. That being the position and further the test of trade having understood this label as the product of printing industry, there is no difficulty in holding that the label in question are the products of printing industry. It is true that all product on which some printing is done, are not the products of printing industry. It depends upon the nature

of products an other circumstances. Therefore the issue has to be decided with reference to facts of each case. A general best is neither advisable nor practicable. We are, therefore, of the opinion that there Tribunal was not right in concluding that the printed aluminium labels in question are not "products of printing industry".

14. With respect, we agree with the test formulated by the Division Bench. The question is, whether the product would serve any purpose but for the printing. If the product could serve a purpose even without printing and there is no change in the commercial product after the printing is carried out, the process cannot be said to be one of "manufacture".

15. In Collector of Customs, Bangalore Versus Indian Coated Cartons (P) Ltd. 1997 (92) E.L.T. 459 (S.C.) Division Bench of this Court to which one of us (S.C. Sen) was a party reiterated the principle laid down in Rollatiners Ltd.'s case (supra). That case also related to printed cartons manufactured by the respondents therein. The Bench distinguished the ruling the Metagraphs Pvt. Ltd.'s case.

16. On an analysis of the aforesaid rulings, a two-old 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.

17. Learned counsel for the Revenue has strenously contended that the printing on the bottles will make them a different commodity known as printed bottles. According to him such printed bottles cannot be of any general commercial use but they will be useful only for the persons on whose behalf and for whose benefit such printing has been done. Therefore, according to him the process of printing on bottles is a "manufacturing" process. Reliance is placed by him on the judgment of this court in empire Industries Ltd. & Ors. Versus Union of India & ors. (1985) 3 S.C.C. 314 The question which arose for consideration in that case was whether introduction of sub-clauses (v) (vi) and (vii) is Section 2 (f) of Central Excise Act by Act 6 of 1980 was valid. While upholding the validity of the amendment of the Section by which the definition of "manufacture" was widened so as to include the process of bleaching, dyeing, printing, finishing etc. with reference to cotton fabrics and man-made fabrics, the Court considered what constituted "manufacture". In the connection the Court observed:

> "The taxable event under the Excise Law is 'manufacture'. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes 'manufacture' takes place and liability to duty is attracted".

The court referred to various earlier decisions dealing with the expression "manufacture". We are unable to appreciate as to how the ruling helps the Revenue in the present case. We have already pointed out that the printing on the bottles does not bring into existence a new commercial commodity which is distinct and separate in its character, use and name from the original commodity. Hence, we are unable to accepted the contention of Revenue in this case that printing on bottles involved a process of 'manufacture'.

18. Learned counsel for the assessee has also placed before us a copy of Trade Notice No.28/1980 issued by Pune Central Excise and Customs Collectorate with reference to Tariff Item No.23A(4). It reads thus:

> "Attention of the Trade is invited to the Item No.23-A of the Central Excise Tariff.
>
> 2. It is clarified for the information of the Trade that Glassware decorated in a different factory after the receipt of duty paid plain glassware would not be again liable to duty/differential duty under Tariff Item 23-A (4) of the Central Excise Tariff. All members constituents may please be informed accordingly".

19. Learned counsel submits that it is not open to the Revenue to raise any contention contrary to the notice. Our attention is drawn to the judgment of this Court in Collector of Central Excise, Patna Versus Usha Martin Industries 1997 (94) E.L.T. 460 (S.C.) to which one of us (S.C. Sen) was party. It has been held in that case that Revenue cannot be permitted to take a stand contrary to the instructions issued by the Board and Departmental Circulars issued before enactment of Section 37B of Central Excise Act or thereafter, are equally binding on Revenue as the object on either case was the same namely, to achieve uniformity in the classification. Learned counsel contends that even if the trade notice is held to be not binding on the Revenue as such, it can be used by the assessee to show that the Department has also understood the relevant expression 'manufacture' in the same manner. In the present case it may not be necessary for us to rely upon the trade notice. We have already pointed out that printing on bottles will not amount to manufacture' within the meaning of Section 2(f) of Act.

20. It is useful to refer to the tariff description in Item No.23-A of the Central Excise Tariff. The general description of the item is 'glass' and 'glassware'. There are four categories namely, (i) flat-glass (2) Laboratory glassware (3) glass shells, glass globes and chimneys for lamps and lanterns and (4) other glass and glasswares including tableware. Admittedly, the bottles whether printed of not fall under category (4) mentioned above. If the contention of the Revenue is accepted it would lead to double taxation under the same tariff item. While at the gate of the main factory duty is leviable on the plain bottles under 23A (4), once again duty will be leviable on the printed bottled after the process of printing is over in the premises where such printing is carried out. Such duty will undoubtedly be on the value of the printed bottles which will include not only the cost of manufacture of the bottles but also the cost of printing charges. The Revenue cannot be permitted to levy duty twice on the same item when there is no warrant therefore in the relevant provisions of the Act.

21. In the circumstances there is no difficulty in holding that the view taken by the Appellate Tribunal in Appeal No.ED/SB 682/84-A is erroneous inasmuch as the process of printing is being carried out in a separate premises as found by the Tribunal and such process is not 'manufacture' within the meaning of the Act. Consequently, Civil Appeal No. 757 of 1991 has to be and is hereby allowed. the order of the Tribunal as well as those of the Collector and Assistant Collector are set aside. The show cause notice issued by the Revenue to the appellant in Civil Appeal No. 767 of 1991 is quashed.

22. It follows that the Special Leave Petition (Civil) No. 8316 of 1994 filed by the Union of India has to be and is hereby dismissed.

23. In so far as Civil Appeal No. 2882 of 1993 is concerned, the contention of the appellant has to be accepted on the facts of the case. It is not in dispute that the printing on the bottles is also carried out in the same factory where the bottles are manufactured and the ultimate product which happens to be the excisable item at the gate of the factory is the printed bottle as such. Hence, the value of printed bottles including printing charges is the assessable value of the excisable goods and duty is chargeable thereon. The excisable of the High Court is erroneous inasmuch as it has failed to take note of the fact that the printing on the bottles is also completed within the same factory premises. Hence, the appeal is allowed. The judgment of the High Court is set aside. The order of the Collector dated 7.7.1983 in P. No.RO-943/83 is restored.

24. In both appeals and the Special Leave Petition the parties will bear their own costs.