

M/S. S.G. GLASS WORKS PRIVATE LTD.

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v.

COLLECTOR OF CENTRAL EXCISE AND CUSTOMS

NOVEMBER 8, 1994

[R.M. SAHAI AND N. VENKATACHALA, JJ.]

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Central Excises and Salt Act, 1944—Section 35 A (2)—Notification No. 329/77 dated 26th November 1977—Exemption from payment of excise duty—Glassware produced by semi-automatic process—Benefit of exemption limited to such glassware in production of which molten glass was taken in first mould and where compressed air was used—Use of compressed air is decisive of exemption irrespective of whether it was used at first or second mould.

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Notification No. 329/77 was issued which granted partial exemption of excise duty over and above 18% *ad-valorem* to glassware produced manually and 24% *ad-valorem* to glassware produced by semi-automatic process. The appellant claimed that the glassware manufactured by it are covered under serial No.3 of Notification No. 329/77 dated 26th November 1977. A show cause notice was issued to the appellant proposing to classify the goods under serial No. 1. In the reply, the appellant explained that the appellant used compressed air and even though it was used in the second mould it did not make any difference and the goods were covered by Item No. 3. This explanation was accepted and the notice issued was cancelled. Fresh notice was issued u/s 35-A (2) of the Central Excises and Salt Act, for review of the order cancelling the earlier notice. The Assistant Collector reviewed the earlier order and held that the glassware manufactured by the appellant fell under Item 1 of the Notification as compressed air was not used in the first mould. The order was confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal. Hence this appeal.

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The question of law that arose for consideration was whether the glassware such as globes, chimneys, gallon screw jars, tumblers manufactured by the appellant manually was eligible to duty in the relevant year under serial No. 1 or 3 of the Table to the Notification No. 329/77.

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Allowing the appeal, this Court

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A HELD 1.1 The benefit under the Notification No. 329/77 dated 26.11.77 has been given to the glassware produced by semi-automatic process. What is meant by semi-automatic process is further explained by limiting it to such glassware in the production of which the molten glass was taken in the first mould and where compressed air was used. But there is no indication that the compressed air should have been used in the first mould only. The use of the word 'where' before 'molten glass' and 'compressed air' is significant. According to dictionary the word 'where' may mean 'place or situation'. In the context it has been used it is not descriptive of any place but has been used in the sense of relation or situation. What the Notification contemplates is that if the glassware is manufactured by taking the molten glass manually to the first mould then the compressed air or operated press is applied to it either in the first or second mould then it would be covered by the Notification. If the intention would have been to confine it to first mould when it was not necessary to use 'where' a second time. It is disjunctive and has been used to denote the same meaning, namely, if in processing of it compressed air is used then it is deemed to be a production by semi-automatic process. The notification does not state that this process should also be completed in the first mould. Therefore, it was the use of compressed air which was decisive of exemption irrespective of whether it was used at the first or the second mould. Consequently the glassware manufactured by the appellant was produced by semi-automatic process and is exigible to duty under Serial No.1 of Notification No. 329/77. (308-B-H)

M/s Navopan India Ltd. v. Collector of Central Excise and Customs, JT (1994) 6 SC 80, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2859 of 1986

F From the Order No. D.N. 444/85-D dated the 6th December 1985 of the customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (CEGAT) in Appeal No. ED (SB) (T) A No. 1700/81-D

V.A. Bobde, A.K. Sanghi and S. Mudaliyar for the Appellants.

A.K. Ganguli, V.J. Francis, V.K. Verma and Sushma Suri for the Respondent.

G The Judgment of the Court was delivered by :

H R.M. SAHAI, J. This appeal is directed against the order of Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The short question of law that arises for consideration is whether the glassware such as globes, chimneys, gallon screw jars, tumblers manufactured by the

appellant manually was exigible to duty in the relevant year under Serial No. 1 or 3 of the Table to the Notification No. 329/77 dated 26th November 1977. A

By Notification No. 265/77 dated 3rd August 1977, glassware manufactured manually were fully exempted from payment of excise duty. Notification No. 266/77 applied to other glassware. Both these notifications were superseded by Notification No. 330/77 and Notification No. 329/77 was issued which granted partial exemption of duty over and above 18% *ad valorem* to glassware produced manually and 24% *ad valorem* to glassware produced by semi-automatic process. The appellant in the classification list submitted to the Department Claimed that the glassware manufactured by it was covered under serial No. 3 of Notification No. 329/77. This classification list was approved by the Assistant Collector. However, on 23rd August 1978 a show cause notice was issued to the appellant proposing to classify the goods under serial No. 1. In the reply it was stated by the appellant that it was known to the Department that the appellant used compressed air and even though it was used in the second mould it did not make any difference and the goods were covered by Item No. 3. This explanation was accepted by the Department and the notice issued was cancelled. Fresh notice was issued Under Section 35-A (2) of the Central Excises and Salt Act, 1944 on 10th December 1979 for review of the order cancelling the earlier notice. This was contested and the appellant claimed that the authority had no jurisdiction to review or revise the order. The Assistant Collector by his order dated 5th January 1981 reviewed the earlier order and held that the glassware manufactured by the appellant fell under Item 1 of the Notification as compressed air was not used in the first mould. In appeal it was held that the molten glass was brought from the furnace to the first mould manually by a worker and another worker operated the press resulting in what was described as processing of the glass. It further found that the final shape to the article manufactured by the appellant was given at the second mould by using compressed air. It consequently held that since there was no use of compressed air in the production process of the glassware in the first mould, the articles manufactured by the appellant did not fall in serial no. 3 of the Notification. B
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Relevant part of the Notification No. 329/77 is extracted below: G

“Glassware including tableware produced by Semi-automatic process, that is to say, where molten glass is taken to the first mould manually and where either compressed air or mechanically operated press is used.” H

A None of the authorities disputed that in the manufacturing process the molten glass was taken by the appellant to the first mould manually. Nor there was any dispute that the compressed air was used by the appellant. The narrow difference arose whether the compressed air was used in the first or the second mould. The appellant admitted that it was used in the second mould for giving the final shape. According to Tribunal the

B Notification exempted only those glassware where molten glass was not only taken to the first mould manually but the compressed air or mechanically operated press was also used in the first mould. The short question is if this was correct reading of the Notification. The benefit under the Notification has been given to the glassware produced by semi-automatic process. What is meant by semi-automatic process is further explained by

C limiting it to such glassware in the production of which the molten glass was taken in the first mould and where compressed air was used. But there is no indication that the compressed air should have been used in the first mould only. It has not been found by any of the authorities that the compressed air was not used in the second mould or it was not necessary

D for the production of the glassware. The Notification does not further say like taking of molten glass manually that the process of compressing air etc. should have been applied in the first mould. The use of the word 'where' before 'molten glass' and 'compressed air' is significant. According to dictionary the word 'where' may mean 'place or situation'. In the context it has been used it is not descriptive of any place but has been used in the

E sense of relation or situation. In other words what the Notification contemplates is that if the glassware is manufactured by taking the molten glass manually to the first mould and then the compressed air or mechanically operated press is applied to it either in the first or second mould then it would be covered in the Notification. If the intention would have been to

F confine it to the first mould then it was not necessary to use 'where' a second time. It is disjunctive and has been used to denote the same meaning, namely, if in processing of it compressed air is used then it is deemed to be a production by semi-automatic process. The Tribunal in reading the words 'where either compressed air or mechanically operated press' along with the earlier expression 'first mould' committed an error of

G law. The two requirements are quite distinct. The one requires the glass to be taken to the first mould manually. Once that was found, that request stood satisfied. But to be covered in the expression 'semi-automatic process' the glassware was further required to be processed by use of compressed air. The Notification does not state that this process should also be completed in the first mould. The word 'and' by itself may have been

H susceptible of giving rise to the argument that it was another condition to be

satisfied in the first mould itself. But it having been used before the word 'where' it is disjunctive and lays down another requirement for a glassware to be produced by use of semi-automatic process to be entitled for exemption. Therefore, it was the use of compressed air which was decisive of exemption irrespective of whether it was used at the first or the second mould. Consequently, the glassware manufactured by the appellant was produced by semi-automatic process as contemplated in the Notification at serial no. 1 of Notification No. 329/77. A B

Reliance was placed by the learned counsel for the Department on *M/s Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad*, JT (1994) 6 SC 80. It was urged that the Notification under which the appellant was claiming concessional rate of tax being a Notification of exemption should be construed strictly and in case of doubt and ambiguity in favour of the State. True, but there does not appear to be any doubt or ambiguity. Therefore, the ratio of the decision is not of any help to the Department. C

In the result, this appeal succeeds and is allowed. The order passed by the Tribunal is set aside. It is held that the glassware manufactured by the appellant during the period in dispute was exigible to duty under Serial No.1 of Notification No. 329/77. The appellant shall be entitled to its costs.

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Appeal allowed.