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REAL OPTICAL CO.

v.

APPELLATE COLLECTOR OF CUSTOMS AND ANR.

FEBRUARY 23, 2001

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[SYED SHAH MOHAMMED QUADRI AND
S.N. PHUKAN, JJ.]

Excise Laws :

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Central Excises and Salt Act, 1944 :

Rough Ophthalmic Blanks—Classification of—Tariff Item No. 23-A(4) or Residuary Tariff Item No. 68—Held : Identity of an article is associated with its primary function—The functional character of Rough Ophthalmic Blanks is different from glass or glassware as these are used for making optical lenses—Hence, Rough Ophthalmic Blanks are not classifiable under Tariff Item No. 23-A(4) but under Residuary Tariff Item 68 attracting a lower rate of duty—Central Excise Tariff.

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The appellant imported Rough Ophthalmic Blanks and was called upon to pay countervailing duty, which it paid. The appellant filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal contending that Rough Ophthalmic Blanks fell under Residuary Tariff Item No. 68 attracting a lower rate of excise duty and not under Tariff Item No. 23-A(4) and claimed refund of countervailing duty. The appeal was dismissed. Hence this appeal.

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Allowing the appeal, the Court

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HELD : 1. In interpreting items in Statutes like Excise Acts or Sales Tax Acts resort should be had not to the scientific or technical meaning of the terms or expressions used but how does the class or section of people dealing with or using the product identify the product. However, if any term or expression has been defined in the enactment then it must be understood in the sense in which it is so defined. It is also a common experience that the identity of an article is associated with its primary function inasmuch as a customer buys it to perform a specific function from it. [73-A-B]

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2. A general merchant dealing in glass or tableware does not deal in articles like Rough Ophthalmic Blanks with optical properties, which may be used for making spectacles. The functional character of Rough Ophthalmic Blanks is different from glass or glassware, as these commodities are used for different purpose viz., making of optical lenses, etc. Rough Ophthalmic Blanks are purchased by manufacturer of spectacles for making spectacle lenses and not for the purpose of other glass or glassware including tableware. [73-D]

Indo International Industries v. CST, AIR (1981) SC 1079, followed.

Atul Glass Industries (Pvt.) Ltd. v. CCE, [1986] 3 SCC 480, relied on.

3. Rough Ophthalmic Blanks would not come under Tariff Item No. 23-A(4) but will come under Residuary Tariff Item No. 68.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 467 of 1987.

From the Judgment and Order dated 1.7.86 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, in C.A. No. 242 of 1981-D.

Amrish Kumar for the Appellant.

Gowri Shankar Moorthy, T. Raja and P. Parmeshwaran for the Respondents.

The Judgment of the Court was delivered by

PHUKAN, J. This appeal by special leave is directed against the judgment dated 1-7-1986 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi.

The question raised in this appeal is whether Rough Ophthalmic Blanks falls under tariff item No.23-A (4) or under Residuary Tariff item No.68 of Central Excise Tariff.

The appellant imported Rough Ophthalmic Blanks and was called upon to pay counter-vailing duty, which was paid. The Appellate Collector of Customs, Mumbai in another appeal held that Rough Ophthalmic Blanks could be charged to duty only under Residuary Tariff item No.68. The appellant, therefore, applied to the Assistant Collector of Customs (Incharge of Refund), Madras claiming refund of the above counter-vailing duty, which

A was rejected. The appeal and the review filed by the appellant were also dismissed. Thereafter, the appellant filed the appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The Tribunal heard the appeal filed by the appellant along with other appeals and dismissed the appeal of the appellant by the impugned judgment dated 1.7.1986.

B The facts are not disputed that Rough Ophthalmic Blanks with optical properties are manufactured out of combination of highly purified form of raw glass and other materials such as silica, alumina, sodium potassium and rare earths etc. after technical, chemical and thermal processes.

C The Tribunal rejected the contention on behalf of appellant that Rough Ophthalmic Blanks are not imported as glass simpliciter but as a special commodity for the purpose of manufacture of spectacle lenses. According to Tribunal, the true test for classification is not the actual process adopted for manufacture but the identity of the goods with the relevant description or definition in the First Schedule to the Act or failing that, in terms of commercial parlance and further that the existence or otherwise of optical properties, as distinguished from the exact specification required for optical glass, is no criterion for inclusion in, or exclusion out of the above Item. The Tribunal also referred to Indian Standard Glossary of terms relating to glass and glassware and after discussion did not accept the contention on behalf of the appellant that Rough Ophthalmic Blanks though made of glass are not known in the trade as glass.

F Learned counsel for the appellant has placed reliance on other authorities to explain how Rough Ophthalmic Blanks are made from glass. In our opinion it is not necessary to go into these authorities as we have already explained how Rough Ophthalmic Blanks are made and this is not disputed.

According to learned counsel for revenue, Rough Ophthalmic Blanks would fall under the above Tariff Item 23-A (4), as these are articles of glass.

G Tariff Item 23-A (4) after amendment on 1.3.1979 read as follows:-

“other glass, glass ware including tableware”

H Tariff Item 68 is of residuary character and relates to all other goods not elsewhere specified. The rate of duty is higher if the product falls under Tariff Item No.23A (4) then if it fell under Tariff Item No.68.

It is settled position of law that in interpreting items in Statutes like Excise Acts or Sales Tax Acts resort should be had not to the scientific or technical meaning of the terms or expressions used but how is the product identified by the class or section of people dealing with or using the product, however, if any term or expression has been defined in the enactment then it must be understood in the sense in which it is so defined. It is also a common experience that the identity of an article is associated with its primary function inasmuch as a customer buys it to perform a specific function from it.

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What was important by the appellant was not glass simplicitor but Rough Ophthalmic Blanks. We have already referred that Rough Ophthalmic Blanks with optical properties are manufactured out of combination of highly purified raw glass and other material after highly technical, chemical and thermal process.

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A general merchant dealing in glass or tableware does not deal in articles like Rough Ophthalmic Blanks with optical properties, which may be used for making spectacles. The functional character of Rough Ophthalmic Blanks is different from glass or glassware, as these commodities are used for different purpose viz. making of optical lenses, etc. Rough Ophthalmic Blanks are purchased by manufacturer of spectacles for making spectacle lenses not for the purpose of other glasses or glassware including tableware.

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In *M/s. Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh*, AIR [1981] SC 1079, a three judge Bench of this Court considered the entry "glassware" falling within Entry No.39 of First Schedule of U.P. Sales Tax Act and held that clinical syringes would not fall under the said entry. It was also held that in commercial sense glassware would never comprise articles like clinical syringes, thermometer, etc., which have specialized significance and utility. In this appeal also Rough Optical Blanks has specialized utility and, therefore, would not come under Tariff Item No.23A (4).

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In *Atul Glass Industries (Pvt.) Ltd. v. Collector of Central Excise*, [1986] 3 SCC 480, the Bench of this court held that glass mirror cannot be classified as other glass or glassware set forth in Tariff Item 23-A (4) and must, therefore, fall under the residuary Tariff Item 68 of the First Schedule to the Act.

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A For the reasons stated above, we have no hesitation to hold that Rough Ophthalmic Blanks would not come under Tariff Item No.23A (4) and will come under Residuary Tariff Item No.68. Accordingly we hold that the appeal has merit and it is allowed by setting aside the impugned judgment. In the facts and circumstances of the case we direct the parties to bear their own costs.

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V.S.S.

Appeal allowed.