

**Court No. - 38**

**Case :- SALES/TRADE TAX REVISION No. - 1281 of 2012**

**Revisionist :-** The Commissioner Commercial Tax U.P.  
Lucknow

**Opposite Party :-** S/S G.S.C. Toughened Glass

**Counsel for Revisionist :-** S.C.

**Counsel for Opposite Party :-** Nishant Mishra, Nishant  
Mishra, Yashonidhi Shukla

**Hon'ble Saumitra Dayal Singh, J.**

Heard Sri A.C. Tripathi learned Standing Counsel for the revisionist and Sri Nishant Mishra learned counsel for the opposite party-assessee.

Present revision has been filed by the revenue against the order dated 28.5.2007 passed by the Trade Tax Tribunal, NOIDA in Second Appeal No. 204/2006 for A.Y. 2002-2003 (U.P.). By that order, the Tribunal has allowed assessee's appeal and held insulated glass manufactured and sold by the assessee to be falling in the general description of 'plain glass-panes' and therefore, excluded from Notification No. 1273 dated 25.4.2001 as amended from time to time. Accordingly, insulated glass has been held taxable as unclassified commodity @ 10%.

In the revision proceedings, following question of law has been pressed:

*"Whether on the facts and in the circumstances of the case the Trade Tax Tribunal was legally justified in holding that on the manufacture and sale of laminated, insulated and toughened glass the dealer was liable to tax @ 10% as glass and not @ 16% as all the goods made of glasses ?"*

Having heard learned counsel for parties and having perused the record, in the first place the dispute has to remain confined to insulated/toughened glass. With respect to laminated glass mentioned in the question of law (noted above), there can be no dispute that the assessing authority had taxed both laminated as

also insulated glass manufactured by the assessee @ 16% treating those commodities to be covered by the Notification entry "All goods and wares made of glass" under Notification No. 1273 dated 25.4.2001. Against that assessment order, the assessee had preferred first appeal that came to be partly allowed vide order dated 28.2.2006. The commodity laminated glass was held to be excluded from the above noted notification entry. Accordingly, it was taxed @10% as an unclassified commodity. That decision of the first appeal authority attained finality inasmuch as the revenue never challenged the same. There is no discussion in respect of any commodity that may be known as toughened glass. That issue does not arise.

In view of the above discussion, the only issue involved in the present revision is with respect to taxability of the commodity insulated glass.

Here it may be noted, in **M/s Hindustan Safety Glass Works, Allahabad Vs. Commissioner of Sales Tax, U.P., 1998 U.P.T.C. 1012** an issue had arisen with respect to taxability of glass screen manufactured by that assessee. The dispute had arisen with respect to Entry No. 39 of Notification dated 20.5.1976. It read as below:

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

After discussing the facts of the case and the decision of the Supreme Court in **Atul Glass Industries (Pvt) Ltd. Vs. Collector of Central Excise, 1986 U.P.T.C. 1345**, a learned Single Judge of this Court made the following observations:

*" 9. Now coming down to the present case, description as per entry 39 of the notification dated 20.5.1976 is of all goods and wares made of glass, not including plain glass-panes". This*

*means that all items of glass have not been included as part of "glass and glassware". Plain glass-panes have been excluded from the scope of Entry 39 aforesaid. Glass screen manufactured by the assessee is more akin to glass-panes rather than glassware. The said item has been excluded from the scope of Item 39. Glass screen is manufactured out of glass sheets and it is a new item. As such, the same is excluded from the said Entry 39. Following the Supreme Court decision, I have no hesitation in holding that the aforesaid goods fall under unclassified item rather than in Item No. 39 of the notification. In any case, if it falls under Item 39, the same is by way of exclusion."*

Thus, glass screens were held to be covered under the term 'plain glass-panes' appearing in the exclusionary clause of the taxing entries.

Insofar as the present taxing entry is concerned, similar language has been employed by the legislature as was employed by earlier Notification dated 20.5.1976. Therefore, the interpretation made by this Court in **M/s Hindustan Safety Glass Works, Allahabad** (supra) would apply to the facts of the present case as well. It may be noted, under Notification No. 1273 dated 25.4.2001 only difference that has arisen is with respect to earlier existing notification entry 'hurricane lantern chimneys'. It has been replaced with 'all kinds of chimneys'. However with respect to exclusion of plain glass-panes from the scope of taxing entry pertaining to all goods and wares made of glass, there is no change.

The Tribunal has made sufficient discussion of manufacturing process of the insulated glass manufactured and sold by the assessee and on its use. Thus, it has also been found that insulated glass is nothing but double glazed dual sheet (in short DGDS). It has then referred to its order in **M/s Gurint India (Pvt.) Ltd. in Second Appeal No. 477 of 2004 and 478 of 2008, decided on 01.12.2004** to opine that DGDS was nothing but plain glass-panes.

Nothing contrary has been shown as may allow the Court to take a different view other than expressed in **M/s Hindustan Safety Glass Works, Allahabad** (supra).

Accordingly, the revision lacks merit and is **dismissed**.

**Order Date :- 14.7.2022**

Faraz