

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: April 06, 2015

Pronounced on: April 24, 2015

+ ST.APPL. 21/2013

AME DE VERRE (P) LTD.

..... Petitioner

Through: Mr.Tarun Gulati, Mr.Sparsh
Bhargava and Mr.Shashi Mathews,
Advts.

versus

COMMISSIONER TRADE AND TAXES

..... Respondent

Through: Mr.Sushil Dutt Salwan, ASC for
GNCTD and Ms.Latika Dutta, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE R.K.GAUBA

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1. This appeal under Section 81 of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as “DVAT Act”) assails the order dated 17.8.2012 passed by the Appellate Tribunal Value Added Tax (hereinafter referred to as “the Tribunal”) in appeal No.379/ATVAT/06-07 whereby the view taken by the Commissioner, Trade and Taxes, Govt. of NCT Delhi (“Commissioner”, for short) in order dated 15.7.2009 was upheld and the goods sold by the appellant-assessee under the brand name of “Baldi” were held to be such as cannot be categorized as “Handicrafts” within the meaning of the expression used against entry at serial No.128 in the Third

Schedule referable to Section 4(1)(b) of DVAT Act, so as to attract levy of VAT @ 4% at the rate then prevalent, and, instead, held it as unclassified item taxable @ 12.5% in terms of Section 4(1)(e).

2. The appellant claims to be a dealer registered under DVAT Act having its registered office at 323-A, Emporium Mall, Vasant Kunj, New Delhi-110070. It claims to be engaged, *inter alia*, in the business of sale of stained glass products such as panels, lamp shades and other miscellaneous glass articles including decorative items sold under the brand name of “Baldi”. It is averred that the “Baldi” glass items are manufactured primarily using the designs given by craftsmen and formulating the same on a glass base. The manufacturing process of “Baldi” statedly involves crystal playing, engraving, polishing, assembling, chiseling and after final product is made the same is subjected to hand polishing, dismantling, pre-gilding and then finally assembled as per the design given by the craftsman. The entire process of manufacture is claimed to engage highly qualified artisans who make the individual pieces by hand with no two pieces resembling each other. Claiming that these goods having decorative visual appeal are made as a result of process which involves substantial use of hands, as against being manufactured by machines, reliance is placed, *inter alia*, on literature explaining the manufacturing process, that was shared with the Commissioner through letter dated 6.3.2009, which would describe “Baldi” as product of Italy, popular as a retail gift item of “exclusivity and opulence”, signature of “luxury style of living” involving “neoclassicism and timeless shapes”, using materials such as “amethyst, lapis, tiger eye, malachite, jasper, rock crystal” and “finest flawless crystal

from Florence” etc. The material thus submitted explained the productive process as under:

<i>"Crystal blowing :</i>	<i>The raw piece of lead glass gets formed</i>
<i>Engraving :</i>	<i>The craftsmen carves parallel lines into the crystal</i>
<i>Polishing :</i>	<i>The object is deepened in acid to clear its surface</i>
<i>Assembling :</i>	<i>The crystal piece is assembled with bronze components (they can be dozens) that were previously designed by Baldi and cast for the specific piece</i>
<i>Chiselling :</i>	<i>The metal pieces are refined carefully with a chisel</i>
<i>Hand polishing :</i>	<i>The whole object is hand polished</i>
<i>Dismantling :</i>	<i>Every single component is separated</i>
<i>Pre-gilding :</i>	<i>All the bronze components are deep washed into an acid solution, brushed, polished and dried at 1.472 degrees (Fahrenheit) for 24 hours.</i>
<i>Gilding :</i>	<i>A stratum of 2/3 micron of gold 24k is laid on the bronze</i>
<i>Patina :</i>	<i>The shining gold is matted and given an antique appearance</i>
<i>Final assemble :</i>	<i>The last details are fixed and the product gains its final look”</i>

3. It is further stated in the above mentioned written submission that when semi-precious stones or marbles are used, the product goes through following three main stages :

<i>“Cutting raw stone :</i>	<i>The raw stones are cut in 0.12 inches slices</i>
<i>Mosaic work :</i>	<i>After being designed the</i>

Polishing :

pieces are perfectly assembled

The surface is made smooth and shining”

4. It may be added here that the ware in which the appellant deals also includes stained glass articles made by firstly creating a design on paper which is then cut out into shapes to form a pattern wherefrom a proper sheet of glass or cutting is selected and cut into the pieces of required shapes and sizes, eventually assembled, with the help of copper wire and lead canning, after being polished with granite. Claiming that both the stained glass articles and the products sold under the brand name “Baldi” were classifiable as “Handicrafts” in terms of the third schedule appended to DVAT Act thereby attracting the levy of DVAT @ 4% under Section 4(1)(b), as it then stood, an application was submitted on 27.1.2009 by the assessee before the Commissioner under Section 84(4) of DVAT Act praying for following questions to be determined :

“a. Whether the said goods, viz., stained glass lamps and hand crafted decorative articles of glass including the goods sold under the brand name of “Baldi” are classifiable as Handicrafts under Entry 128 of Schedule III of the said Act.

b. Whether the said goods are chargeable to VAT @ 4% ad valorem instead of 12.5% under the residual category as specified under Section 4(e) of the Act.”

5. The above questions persist, as questions of law, for the purpose of the appeal at hand, though restricted to the goods sold under the brand name of “Baldi”.

6. As mentioned earlier, the assessee submitted on 6.3.2009 documents describing the manufacturing processes of the products in question for consideration of the Commissioner. The claim of the assessee about the products being “Handicrafts” was resisted by the Revenue. It, *inter alia*, urged that “Baldi” items were admittedly “articles of handicraft art popular in Italy”, directly imported and sold by the dealer but did not fulfill the essential criteria for being treated as “Handicrafts”.

7. While accepting the claim with regard to the stained glass items, the contention of the assessee vis-à-vis “Baldi” items was rejected by the Commissioner, through reasoning, the relevant portion whereof may be extracted as under :

“9. “Handicrafts” have been given specific concession for sole purpose of encouragement of this industry. The reasons behind the concession/exemption given to such items are :-

(i) Providing employment to the masses, especially in the rural areas of our country, as an additional source of income for their livelihood.

(ii) Ensuring that their traditional arts and crafts get recognized and encouraged, and are not made unviable or redundant through much cheaper, mass-produced machine-made articles.

(iii) Promoting India’s art and culture by making these articles exportable, and encouraging their export market through various incentives and schemes by the Government of India.

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13. From the above, it is appreciated for an article to be produced and marketed as “Handicrafts”, for it to attract inclusion under schedule III and therefore, to be charged 4% VAT instead of 12.5% under residual category. Presently what is being marketed is an object d’art, and not merely an ‘handicraft’, even if it is produced locally and handcrafted,

would have no different connotation than an exquisitely carved statue, jewellery or decorative piece, admittedly made by hand. At the same time it is intended that this and similar crafts possibly would get encouraged by being labelled as “Handicrafts” and by their inclusion under the heading “Handicrafts” in the III Schedule of DVAT Rules.

14. I agree with the view of the DR as regards the “Baldi” items imported by the dealer from “ITALY”. These items under determination cannot be categorized as ‘Handicraft’ and are taxable as unclassified items at the rate of 12.5%.”

8. Feeling aggrieved, the assessee took out appeal No. No.379/ATVAT/06-07 contending that the Commissioner had fallen into error for the reasons , *inter alia*, that the entry “Handicrafts” as included in the schedule to DVAT Act was not qualified by the words “made in India”, improperly denying the benefit of the entry after concluding that the process of manufacture involved substantial use of hand. It was submitted that the goods in question are covered within the expression used in entry 128 of the third schedule and that considerations such as price of the product or its place of manufacture are irrelevant. Urging a strict interpretation of the fiscal statute, the assessee prayed that the benefit of specific entry be accorded and recourse to the residuary clause be rejected.

9. The Tribunal, however, upheld the view taken by the Commissioner and dismissed the appeal of the assessee holding that it had failed to show that “Baldi” items imported from Italy, could be classified as “Handicrafts” under entry 128 of the third schedule . Rejecting the case of the appellant , *inter alia*, based on the tests laid down in the case of *Collector of Central Excise V. Louis Shoppe* (1996) 83 ELT 13 (SC) and the ruling of *Oswal*

Agro Mills Ltd. V. Collector of Central Excise (1993) 66 ELT 37 (SC), the Tribunal observed as under :

“19. It is to be noted that from the preface of the copy of the printed material pertaining to ‘Baldi’ filed with this appeal, the signature message for the product marketed as ‘Baldi’ is “The Luxury Style of Living”. If we consider this expression described as the item “The Luxury Style of Living” when considered on the touch stone of the Common parlance and commercial parlance test, the commodity marketed as ‘Baldi’ cannot be treated as “Handicrafts” by any yardsticks. Further the psyche of a ‘Handicraft’ has more of a traditional and basic appeal rather than a luxury style of living.

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22. if any item or expression has been defined in the enactment than it must be understood in the sense in which it is defined but in absence of any definition being given in the enactment, the meaning of the term in common parlance or commercial parlance has to be adopted. for determining the purpose or object of legislation, it is permissible to look into the circumstances which prevailed when the law was made, the statement of objects and reasons for the bill which actuated the step to provide a remedy for the then existing malady can be used for the limited purpose of appreciating the background and the antecedent state of affairs leading to the legislation. the VAT Act was enacted in 2004. Entry No.128 of the third schedule , which reads “Handicrafts”, was inserted w.e.f. 11.05.2005. Thus, the commodity “Handicrafts” which is meant by this entry is such a commodity which were understood in common parlance in our country as handicrafts which are handicrafts basic in terms of usage with as that appeal at the time when this entry was inserted in the third schedule . The question for consideration is whether the legislature while inserting this entry w.e.f. 11.05.2005 could have item being marketed as ‘Baldi’ after importing from Italy in contemplation as “Handicrafts”. For answering this question the literature/printed material submitted by the appellant along with this appeal has to be considered. Page

35 of the appeal file shows that the present target of the Italy Manufacturer of “Baldi” and the appellant being the importer of this item is “India” which clearly means that this item known as “Baldi” was not in the market as a handicraft item in 2005 and as such if we go by the observation made by Their Lordships in the case of Oswal Agro (Supra) then the item “Baldi” has been rightly held not to be a handicraft being covered by Entry No.128 of Thrid Schedule.”

10. Rejecting the contention of the appellant that the Commissioner had failed to adhere to the express words of the taxing statute or erred in classifying “Baldi” under the residuary entry and relying on the cases of *Atul Glass Industries P. Ltd. V. Collector of Central Excise* 63 STC 322 (SC), *Delhi Cloth and General Mills Co. Ltd. V. State of Rajasthan* (1980) 46 STC 256, *State of Kerala V. N D Narayanan Nambiar* (2008) 11 VST 380 (Ker) and *Commissioner V. Kohinoor Glass House* (2009) 26 VST 135 (All), the Tribunal proceeded to apply “common parlance theory as well as the functional test” for observing that *“an item is to be considered sometimes by the express words of the taxing statute and sometimes by the implied meaning of the words of a taxing statute.”*

11. In the case of *Louis Shoppe* (supra), the issue for determination was as to whether wooden furniture by itself could be treated as “Handicrafts” within the meaning of the Government notification dated 10.2.1986 issued under the Central Excise Act. The Supreme Court observed that furniture as such would not qualify as “Handicrafts” but could be so characterised if the following tests are satisfied :-

“(1) It must be predominantly made by hand. It does not matter if some machinery is also used in the process.

(2) It must be graced with visual appeal in the nature of ornamentation or in-lay work or some similar work lending it an element of artistic improvement. Such ornamentation must be of a substantial nature and not a mere pretence.”

12. It was ruled that whenever the above question arises, the authorities shall examine the matter from the above stand-point. The test so laid down has been consistently followed ever since by the Courts and tribunals. For illustration, we may refer to *Commissioner V. Tip Top Industries*, 2005 (187) ELT 195 (SC) and *Diamond Crystal Pvt. Ltd., Indore V. State of MP* [2013 (3) MPLJ 497].

13. The word “Handicrafts” is not defined specifically for purposes of DVAT Act. Therefore, it may be of advantage to refer to the dictionary meaning of the expression. The New International Webster’s Comprehensive Dictionary of the English language defines “Handicrafts” as a “*skill and expertness in working with the hand*” or as “*a Trade calling for such skill.*” Similarly, the Concise Oxford English Dictionary explains the expression as “*a particular skill of making decorative domestic or other objects by hand*” or as “*an object made using a skill of this kind*”.

14. In the Encyclopaedia Britannica, the word ‘handicraft’ is defined as follows :

“Occupation of making by hand usable products grade with visual appeal. Handicrafts encompass activities that require a broad range of skills and equipment, including needle work, lace-making, weaving, printed textiles, decoration, basketry, pottery, ornamental metal working, jewellery, leather working, wood working, glassblowing, and the making of the stained glass.”

15. P. Ramanatha Aiyar's "The Law Lexicon" provides the following definition for the expression :-

"Manual skill; manual art or trade. In the Workshop Regulation Act "Handicrafts" means any Manual Labour exercised by way of Trade or for purposes of gain in or incidental to the making of any Article or part of an Article, or in or incidental to the altering repairing, ornamenting finished or otherwise adapting for sale, any Article.

'handicraft' means any manual labour exercised by way of trade or for purposes of gain in or incidental to the making any article or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale, any article."

16. In a case reported as *Padmini Products V. CCE*, 1989 (43) ELT 195 (SC) the question was as to whether *agarbatti* and *dhoop* are entitled to exemption as "Handicrafts" within the meaning of the government notification under Central Excise and Salt Act, 1944. The claim of the assessee to such effect was rejected on the factual finding that a very small portion of the required work for the manufacture of these items was done by hand, when it is machines which predominantly produced the end product. While examining the issue, the Court subjected to scrutiny the process of manufacture of the items in question, *inter alia*, in light of the dictionary meaning of the expression "Handicrafts" as provided in the Concise Oxford English Dictionary and Encyclopaedia Britannica as indeed the distinction between "Handicrafts" and goods which are "machine made" as explained in the definition adopted by UNCTAD as follows :

"Some goods may be produced partly by machine and partly by hand : (i.e. a dress made up by hand from machine made cloth, perhaps with additional hand embroidery or other decorations) ... in such cases a product should be regarded as

hand-made or handicrafts if the essential character of the product in its finished form is derived from the 'hand-made' aspect of its production."

17. Noticeably, the expression "Handicrafts" also occurs in the Import Policy adopted by the Government of India. Referring to the policy book for 1984-85, the Court extracted the general note in the said document against entry relating to "Handicrafts" stating as follows :

"Articles which are classifiable elsewhere in this policy will be deemed to be 'handicrafts' falling in this group only if such articles, besides being made by hand, have some artistic or decorative value; they may or may not possess functional utility value in addition. Artistic or decorative value of the article exported need not necessarily come out of any art work, engraving or decoration done on the articles but the very form, shape or design of the article could also be artistic and suggestive of the fact that the article is primarily meant for decorative and not for utility purposes."

(emphasis supplied)

18. The expression "Handicrafts", not specially defined for purposes of DVAT Act, cannot take a meaning other than the one explained by the interpretation given to it in the context of another fiscal statute viz. the Central Excise Act. The tests to be applied, for present purposes, must thus be the same as were evolved in the case of *Louis Shoppe* (supra).

19. In above view, we have no hesitation in concluding that a product in order to qualify as "Handicrafts" for the purposes of application of entry no.128 of the third schedule to DVAT, must have been made "predominantly by hand" and it would be inconsequential if some part of the process involves use of some machinery. Needless to add, such product must be one "graced with artistic visual appeal" resultant upon substantial

(not a mere pretence) ornamentation or in-lay or some similar work adding to it elements of artistic improvement.

20. It is trite law that a taxation statute must be construed strictly on the basis of plain language [*Oswal Agro Ltd.* (supra)]. In the matter of interpretation of a legislation, particularly a taxing statute, ordinarily there is no place for words to be added. It is presumed that wherever necessary the legislature would provide an expansive definition and express in clear terms to indicate exclusion of what it does not intend to include.

21. To illustrate the above, we may refer to entry at serial no.117 in the third schedule of DVAT Act. It relates to “imported textiles and fabrics”. Necessarily, such textile and fabrics as are indigenously produced cannot take the cover of entry no.117. Similarly, entry No.22 in the first schedule to DVAT Act, which relates to sales which are exempt from such tax in terms of Section 6, concerns “indigenous handmade musical instruments”. Obviously, the benefit of such exemption cannot be extended to imported handmade musical instruments. The logic is simple. By adding the word “indigenous”, the legislature has qualified the expression giving it a restrictive meaning.

22. We may add three more examples here. The entry nos. 12, 20 and 39, again in the first schedule to DVAT Act, relate to “earthen pot”, “all bangles except those made of precious metals” and “handmade safety matches” respectively. All these items are exempt from VAT. The way these commodities have been described in the said schedule, pots which are metallic, bangles which are made of precious metals like gold or silver, or safety matches produced with the help of machinery would not qualify for exemption under Section 6 of DVAT Act.

23. It, thus, clearly emerges that the expression “Handicrafts” used in entry no.128 of the third schedule to DVAT Act must be construed in its plain lexical sense, without any colour being added by extraneous factors.

24. In our opinion, the approach of both the Commissioner and the Tribunal has been erroneous and, to say the least, on reasoning which defies logic or substance.

25. In para 9 of the order, as quoted earlier, the Commissioner has set out the reasons which, in his understanding, have weighed with the policy makers for granting certain concessions to the handicraft industry in India. The said narrative does not present an exhaustive account but lists out only some of the factors justifying the concession regime. The Commissioner has not referred to any policy document on the subject. Therefore, the said considerations cannot be adopted as a touchstone.

26. The fact that “Baldi” items are imported from Italy seems to have been considered by both authorities, the Commissioner and the Tribunal, as a factor which clinches the issue. There is nothing in the DVAT Act, or the Rules framed therein or, for that matter, any other instruction, notification etc. to require that a commodity in order to be accepted as “Handicrafts” must be one indigenously made or, to put it conversely, must not be one imported into India. We have concluded earlier that the expression “Handicrafts” has to be construed in the sense it is commonly understood. Since the legislative entry does not qualify it by any other pre-requisites, the restrictive interpretation put on it by the authorities below (based on the fact that it is imported from Italy) cannot be approved.

27. In para 22 of the impugned order, the Tribunal took the above considerations (import from Italy) further by observing that the legislature

could not have conceivably intended such an item to be covered in the category of “Handicrafts” while inserting such category into the third schedule w.e.f. 11.5.2005 since this commodity entered the Indian market only later. To put it very mildly, we find the reasoning to be baseless and bordering on absurdity. There is no substance in the approach that the scope and width of a legislative entry of such nature is to be understood with reference to the commodities known to be falling in any given category with reference to a particular point in time. It makes no sense to say that only such commodities as are known to be “Handicrafts” at a particular point of time would be acceptable and that any further additions to the category would remain outside the scope, as if the idea stood frozen with reference to the date of legislative amendment.

28. The Tribunal seems to have been overwhelmed by the fact that the product in question is relatable to “luxury style of living”. It seems to have taken a cue from the observations of the Commissioner who pointedly described “Baldi” items as “*object d’art*”, and “not merely” a “handicraft” as if to say that a handicraft cannot be *object d’art*. Reference to the high price (at which these items seem to be selling in Indian market), also has been made in the same context. We are unable to subscribe to this kind of syllogism. It is not proper to reject a commodity from the category of “Handicrafts” only because it is also an *object d’art*. The dictionary explains the expression “*object d’art*” as a small “decorative object”, [Reference : Shorter Oxford English Dictionary]. Having regard to the tests laid in the case of *Louis Shoppe* (supra), the fact that the commodity is “a decorative object” only reinforces its claim to be accepted as a “handicraft”, rather than playing out as a disqualification.

29. The acceptability, constituency or market for “Handicrafts” has expanded and grown over the years. The *raison d’etre* for government sponsorship or supportive policy for “Handicrafts” industry may have evolved from the idea of promoting traditional arts and crafts with added objective of generating employment in (generally rural) areas connected thereto. But this would definitely not mean that the items sold as “Handicrafts” must be inexpensive. Whether or not the price is high or low is a relative issue to determine which there is no known or bright live benchmark. For such purposes as at hand, the price of the commodity, even otherwise, cannot be a decisive fact. On the contrary, the cost factor involved in production of decorative items made by hand (which is the first, and perhaps the more important test) is bound to be higher than mass produced machine-made commodities. The value of human labour, art and skill is appreciated the world over. It is common knowledge that a consumer is now ready to pay a price higher than the one he would ordinarily offer if the product he desires to acquire, and which appeals aesthetically to her or him, particularly a decorative item, has been produced skilfully by use of hands.

30. In nutshell, high price cannot, rather ought not, become a negative factor. By the same logic, the mere consideration that a decorative item would find pride of place in plush homes, of rich or affluent, adding to their luxurious style of living, cannot take away from the properties on account of which it qualifies to be treated as “Handicrafts”.

31. The revenue did not refute, either before the Tribunal or before this Court, the claim that the “Baldi” items, in which the appellant deals, are predominantly made by hand. There is no dispute that they are items

graced with visual appeal, on account of ornamentation or inlay work carried out skilfully by expert artisans. For these reasons, they do qualify as “Handicrafts” on the twin tests laid down in the case of *Louis Shoppe* (supra) which hold good for the purpose of entry no.128 of the third schedule to DVAT Act.

32. It is basic that if the facts cover the case under a specific provision, the residuary clause would not apply. Since, in our judgment, entry no.128 of the third schedule governs the commodity in question, there is no question of invoking the residual category specified under Section 4(1)(e).

33. For the reasons set out above, we reject the conclusions reached by the Commissioner and the Tribunal. The impugned order is set aside. It is held that the goods sold under the brand name of “Baldi”, as described above, fall in the category of “Handicrafts” within the meaning of the expression used in entry no.128 of the third schedule of DVAT Act and, therefore, chargeable to VAT at the rate applicable to the said third schedule. The question of law is answered accordingly in favour of the assessee and against the revenue.

34. The appeal stands allowed leaving the parties to bear their respective costs.

R.K.GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

APRIL 24, 2015

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