A M/S. TRUTUF SAFETY GLASS INDUSTRIES

v.

COMMISSIONER OF SALES TAX, U.P.

AUGUST 6, 2007

B [DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

U.P. Sales Tax Act, 1948:

C *s.4-B—Notification No. ST-II-755 1/x-9(1)-76 dated 31.12.1976 Annexure-III—Entry 2—"glass and glass wares in all forms"—Meaning of—Held: "Automobile safety toughened glass" including wind screen, door screen, sidescreen and back screen manufactured by assessee are covered under Entry 2 in Annexure III of the Notification and as such assessee entitled to purchase raw materials and package materials without payment* D *of any sales tax on such purchases—Notification No. ST-II-4519/X-7(19)/87 dated 29.8.1987.*

Interpretation of Statutes:

Principles of casus omissus and reading the statute as a whole and the E *golden rule—Explained.*

Maxims:

(i) quod semel aut bis existit proetereunt legislator; and

F *(ii) casus omissus et oblivioni datus dispositioni communis juris relinquitur—Explained.*

Words and Phrases: "in all forms" and "all kinds"—Connotation of.

The appellant-assessee was engaged in manufacture of 'automobile G **safety toughened glass' including wind screen, door screen, side screen and back screen. It applied for grant of recognition certificate u/s 4-B of the U.P. Sales Tax Act, 1948 in respect of notified goods mentioned in Entry 2 of Annexure III to Notification No. ST-II-755 1/x-9(1)-76 dated 31.12.1976 i.e. "glass and glass wares in all forms". The Assessing Authority granted recognition certificate with regard to 'automobile safety toughened glass'**

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authorizing the assessee to purchase raw materials and packing materials at concessional rate of tax. But in appeal, assessee was held to be entitled to purchase raw materials and packing materials without payment of any sales tax. The order was confirmed by the Tribunal. However, the High Court confirmed the order of the Assessing Authority holding that 'glass' or 'glass wares" did not include the articles manufactured by the assessee. Aggrieved, the assessee filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. In Entry 2 of the Notification dated 31.12.1976, the expression used is *"in all forms"*. The Entry contains an expansive description i.e. *"glass"* and *"glasswares" "in all forms"*. There is no dispute that the articles manufactured by the assessee are articles made of glass. The word *'form'* connotes a visible aspect such as shape or mode in which a thing exists or manifests itself, species, kind or variety. The use of the word 'in all forms' is different from the expression *'all kinds'*. The conceptual difference between the words *"all kinds'* and *'in all forms'* is that the former multiplies items of the same kind while the latter multiplies the same commodity in different forms. The use of the word 'in all forms' widens the scope of the Entry. It is to be noted that in the amendment made by Notification dated 1.9.1987 certain specified articles which otherwise fall within the definition of glass and glass wares were excluded i.e. ornamented or cut glass bangles. But no such exclusion was made in respect of articles manufactured by the assessee.

[Paras 13 and 15] [865-D, E, H; 866-A]

Atul Glass Industries (Pvt.) Ltd. v. *Collector of Central Excise,* [1986] 3 SCC 480, distinguished.

1.2. It is settled position in law that while interpreting the entry for the purpose of taxation recourse should not be made to the scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. This is what is known as "common parlance test". The dictionary meaning of 'glassware' means an article made of glass. [Para 14] [865-F]

1.3. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a

A **whole – appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses**
B **thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.**

[Paras 16 and 21] [866-B; 867-D-E]

Accountants of India **v.** *M/s Price Waterhouse and Anr.,* **AIR (1998) SC**
C **74;** *The State of Gujarat and Ors.* **v.** *Dilipbhai Nathjibhai Patel and Anr.,* **JT (1998) 2 SC 253;** *Jamma Masjid, Mercara* **v.** *Kodimaniandra Deviah and Ors.,* **AIR (1962) SC 847;** *Union of India and Ors.* **v.** *Filip Tiago De Gama of Vedem Vasco De Gama* **AIR (1990) SC 981;** *Dr. R. Venkatchalam and Ors. etc.* **v.** *Dy. Transport Commissioner and Ors. etc.,* **AIR (1977) SC 842 and** *Commissioner of Sales Tax, M.P.* **v.** *Popular Trading Company, Ujjain,* **[2000] 5 SCC 515,**
D **relied on.**

Crawford **v.** *Spooner,* **(1846) 6 Moore PC 1;** *Stock* **v.** *Frank Jones (Tiptan) Ltd.,* **[1978] 1 All ER 948 (HL);** *Vickers Sons and Maxim Ltd.* **v.** *Evans,* **(1910) AC 445 (HL);** *Lenigh Valley Coal Co.* **v.** *Yensavage,* **218 FR 547;** *Artemiou* **v.** *Procopiou,* **(1966) 1 QB 878;** *Luke* **v.** *IRC* **(1966) AC 557;**
E *Fenton* **v.** *Hampton* **11 Moore, P.C. 345;** *Jones* **v.** *Smart,* **1 T.R. 52;** *Grey* **v.** *Pearson,* **6 H.L. Cas. 61 and** *Abley* **v.** *Dale* **11, C.B. 378, referred to.**

1.4. The High Court erred in holding that the articles manufactured by the assessee cannot be described as glass or glass wares, as it failed to
F **appreciate that the expression "in all forms" in Entry 2 of Annexure III to Notification dated 13.12.1976 Succeedes the expression "glass and glass wares". The order of the High Court is set aside and that of the Tribunal is restored. [Paras 14 and 24] [865-G; 868-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3467 of 2007.

G From the Judgment and Order dated 21.7.2005 of the High Court of Judicature at Allahabad in S.T.R. No. 469/1992.

Dhruv Aggarwal and Praveen Kumar for the Appellant.

Shail Kumar Dwivedi, Arvind Varma and Kamlendra Mishra for the
H Respondent.

The Judgment of the Court was delivered by A

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Allahabad High Court allowing the revision filed under the U.P. Sales Tax Act, 1948 (in short the 'Act'). It was held by the impugned order that the B articles manufactured by the appellant i.e. toughened safety glass including wind screen, door screen, side screen and back screens were taxable as these articles did not constitute "glass" or "glassware" within the meaning of the Notification under Section 4-B of the Act. Accordingly, the order passed by the Sales Tax Tribunal, Ghaziabad (in short the 'Tribunal') was set aside. C

3. Background facts in a nutshell are as follows:

Appellant (hereinafter referred to as the 'assessee') filed an application for grant of recognition certificate under Section 4-B of the Act in respect of notified goods mentioned in Annexure-III of the Notification No.7551 dated 31st December, 1976. By order dated 22.12.1987 the Assessing Authority D granted recognition certificate in regard to "Automobile Safety Toughened Glass" whereby the assessee was authorized to purchase raw materials and packing materials at the concessional rate of tax. Being aggrieved by the denial of total exemption of sales tax on the purchase of raw materials and packing materials, an appeal under Section 9 of the Act was filed which was E allowed by the Assistant Commissioner (Judicial) by order dated 11.1.1989. Consequentially, the recognition certificate was directed to be amended to the effect that the assessee would be entitled to purchase raw materials and packing materials without payment of any sales tax on such purchases. This order was confirmed in Second appeal by the Tribunal, as Revenue's appeal before the Tribunal was dismissed. An application for revision was filed F before the High Court which, by the impugned order, confirmed the view of the Assessing Officer. It was held that the expression "glass" or "glass ware" does not include the articles manufactured by the assessee. While coming to this conclusion reliance was placed on a decision of this Court in *Atul Glass Industries (Pvt.) Ltd.* v. *Collector of Central Excise,* [1986] 3 SCC 480. G

4. Revenue's stand before the High Court was that the entry "glass and glass wares in all forms" cannot include the articles manufactured by the assessee. Reference was made to para 17 of the judgment in *Atul Glass's* case (supra). The stand of the revenue was accepted as noted by the High Court. H

A 5. In support of the appeal, learned counsel for the appellant submitted that the crucial expressions in the entry i.e. "in all forms" had not been considered by the High Court in proper perspective. When the meaning of the expression is clear, there was no need to find out any technical meaning.

6. At this juncture, the relevant entries in the various Notifications need
B to be noted.

7. Notification No.ST-II-7551/X-9(1)-76 dated 31.12.1976 issued under Section 4-B of the Act is of considerable significance. Clause 2 of the said Notification provides that no tax shall be payable on the sale to or, as the case may be, purchase by any units in respect of raw materials required by it for
C use in the manufacture of the goods mentioned in Annexure III or for the packing materials for the said goods manufactured by it. Entry 2 of Annexure III is the pivotal entry so far as the present dispute is concerned. Same reads as follows:

D "2. *Glass and glass wares including optical glass in all forms.*"

(underlined for emphasis)

8. The crucial expression in the entry is "in all forms". By subsequent Notification the State Government superseded all the previous notifications under Section 4-B of the Act. In Notification No.ST-II-4519/X-7(19)/87 dated
E 29.8.1987 Entry II of Annexure I to the said Notification reads as follows:

"2. *Glass and glassware* including optical glass *in all its forms* but excluding ornamented or cut glass bangles."

(Underlined for emphasis)

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9. A comparison of the previous and subsequent entry shows that ornamented or cut glass bangles were specifically excluded.

10. In view of Clause 2(b) of the said Notification no tax shall be payable in respect of sale to or as the case may be purchase by a dealer holding a
G recognition certificate under Sub-section (2) of Section 4-B of the Act of any raw materials accessories and component parts required for use in manufacture by him of the notified goods mentioned in column 2 of Annexure I or of any goods required for use in the packing of such notified goods manufactured by him.

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11. Learned counsel for the appellant submitted that para 17 of the judgment in *Atul glass's* case (supra) has no relevance. In that case the effect of a special entry and item was under consideration. Therefore, this Court had held that the special must include the general. Such is not the position here. What was required to be considered was the effect of the expression "in all forms". A B

12. Learned counsel for the revenue on the other hand submitted that in *Atul Glass's* case (supra) this Court observed that for determining as to whether a new commodity is substantially different from the original has to be found out by analyzing as to how the product identified by the class or sections of people dealing or using the product treat the product. That is a test which is so attracted whenever the Statute does not contain any definition. It is generally by its functional character that the product is so identified. C

13. The expression used is "in all forms". The Entry contains an expansive description i.e. "glass" and "glasswares" in all forms". There is no dispute that the articles manufactured by the assessee are articles made of glass. The word 'form' connotes a visible aspect such as shape or mode in which a thing exists or manifests itself, species, kind or variety. The use of the word 'in all forms' is different from the expression 'all kinds'. The conceptual difference between the words "all kinds' and 'in all forms' is that the former multiplies items of the same kind while the latter multiplies the same commodity in different forms. The use of the word 'in all forms' widens the scope of the Entry. D E

14. It is settled position in law that while interpreting the entry for the purpose of taxation recourse should not be made to the scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. This is what is known as "common parlance test". The dictionary meaning of 'glassware' means an article made of glass. The High Court proceeded on the basis that while interpreting the words 'glass and glass wares' in the entry, it should be interpreted as it is understood by the persons dealing in them. It held that the articles manufactured by the assessee cannot be described as glass or glass wares. The view of the High Court would have been correct had the expression "in all forms" not succeeded the expression "glass and glass wares". F G

15. It is to be noted that the entry which was under consideration in H

A *Atul Glass's* case (supra) was "glass and glass wares" and not the entry to which this case relates. In the amendment made by Notification dated 1.9.1987 certain specified articles which otherwise fall within the definition of glass and glass wares were excluded i.e. ornamented or cut glass bangles. But no such exclusion was made in respect of articles manufactured by the assessee.

B 16. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.

C 17. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. [*See Institute of Chartered Accountants of India* v. *M/s Price Waterhouse and Anr.*, AIR (1998) SC 74]. The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not D been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford* v. *Spooner,* (1846) 6 Moore PC 1, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. [See *The State of Gujarat and Ors.* v. *Dilipbhai Nathjibhai* E *Patel and Anr.*, JT (1998) 2 SC 253]. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [*See Stock* v. *Frank Jones (Tiptan) Ltd.*, [1978] 1 All ER 948 HL]. Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words F into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in *Vickers Sons and Maxim Ltd.* v. *Evans,* (1910) AC 445 (HL), quoted in *Jamma Masjid, Mercara* v. *Kodimaniandra Deviah and Ors.*, AIR (1962) SC 847).

18. The question is not what may be supposed and has been intended G but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co.* v. *Yensavage,* 218 FR 547). The view was re-iterated in *Union of India and Ors.* v. *Filip Tiago De Gama of Vedem Vasco De Gama,* AIR (1990) SC 981).

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19. In *Dr. R. Venkatchalam and Ors. etc.* v. *Dy. Transport Commissioner and Ors. etc.*, AIR (1977) SC 842, it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

20. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Commissioner of Sales Tax, M.P.* v. *Popular Trading Company, Ujjain,* [2000] 5 SCC 515. The legislative casus omissus cannot be supplied by judicial interpretative process.

21. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in *Artemiou* v. *Procopiou,* (1966) 1 QB 878, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke* v. *IRC,* (1966) AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

22. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But," on the other hand, "it is no reason, when the words of a law do enough

A extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See *Fenton* v. *Hampton* 11 Moore, P.C. 345). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt B legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - Casus omissus et oblivioni datus dispositioni communis juris relinquitur; "a casus omissus," observed Buller, J. in *Jones* v. *Smart,* (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws."

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23. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to D avoid that absurdity and inconsistency, but no further" (See *Grey* v. *Pearson* 6 H.L. Cas. 61). The latter part of this "golden rule" must, however, be applied with much caution. "if," remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an E absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See *Abley* v. *Dale* 11, C.B. 378).

F 24. Above being the position, the High Court was not justified in interfering with the order of the Tribunal. We set aside the order of the High Court and restore that of the Tribunal. The appeal is allowed with no order as to costs.

R.P. Appeal allowed.