

**IN THE COURT OF COMMISSIONER
DEPARTMENT OF TRADE & TAXES
GOVT. OF NCT OF DELHI
VYAPAR BHAWAN, NEW DELHI**

No: 238/CDVAT/2009/07

Dated: 15.07.2009

**M/s Ame De Verre (P) Ltd.
323-A, Exporio Mall,
Nelson Mandela Marg
Vasant Kunj, New Delhi-110070**

ORDER

Present for the Applicant : Sh. Tushar Jarwal, Advocate
Present for the Department : Shri T.C. Sharma, DR.

The above named applicant has file this application on 03.02.2009 u/s 84 of the Delhi Value Added Tax, 2004 (hereinafter referred to as the "Said Act") and the question put up before this court for determination under the above said provision of law are as under:-

“Whether the said goods, viz. stained glass panels, Lamp Shades and other hand crafted items, other hand crafted decorative items including the goods sold under the brand name of “Baldi” are classifiable as “Handicrafts under entry 128 of Schedule III of the said Act”.
“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”.

2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fee of Rs. 500/- paid through Draft No. 249779 dated 03-02-2009.
3. The applicant is a dealer registered at Delhi under DVAT Act, 2004 and deals in stained glass items and in the hand crafted glass articles produced in Italy, imported and marketed under the brand name “Baldi”.
4. The dealer has filed details relating to work being carried out in stained glass lamps and decorative articles besides the designing and manufacturing process of “Baldi” articles.
5. The Counsel for the dealer has filed (i) Photocopy of extracts from ‘The Law Laxicon’ & ‘The Concise Oxford Dictionary’ showing the meaning of word ‘Handicraft’ (ii) Copy of following judgments:-
 - (a) Collector of Central Excise, New Delhi Versus Louis Shoppe.
 - (b) Tip Top Furniture Industries Versus Commissioner of Central Excise, Calicut.
 - (a) Commissioner of Customs, Hyderabad-II Versus JAYPEEM Granites issued under Central Excise Rule, 1944.
 - (iii) (a) Copy of Notification dated: 28.02.1986 by Central Excise Deptt.
 - (b) Circular : 32/99-customs dated 4 June 1999 by Custom Deptt.
 - (c) Notification No. 76/86-CE by Central Excise Deptt.
6. From the above, the applicant has sought to show that both the items, viz. (i) Hand-crafted, hand-painted glass, and (ii) Baldi items directly imported from Italy are in fact, contained under the definition of ‘Handicraft’ and therefore, in terms of aforesaid rulings, exempt from the higher gradation of 12.5%, since they are classifiable under entry 128 of schedule III of the said Act.
7. The DR has averred that ‘Handicraft’ is not defined in the DVAT Act, 2004 per se, but it connotes items produced substantially by hand, as against being machine manufactured. The law as laid down in the Hon’ble Supreme Court rulings is quite clear in their decision of September 2005; the subsequent notifications by the Government of India have implemented this view, that predominance of manufacture by hand is of importance.

8. The DR has argued, in respect of the “Baldi” items directly imported from Italy, that the facts of this case are quite different from those mentioned in the citations.
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, massproduced 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.
10. The DR has pointed out that in the case of “Baldi”, it is admittedly an article of hand-crafted art popular in Italy, and is directly imported and sold by the dealer; essence of the criteria required for any exemption or concession is absent. It is to be treated as yet another artful piece of aesthetic value, which is directly imported and sold locally.
11. In the case of other article of hand-painted glass work, we were informed by the Counsel of the dealer that the intricate hand painting/carving is done locally within Delhi in a workshop by certain artisans employed by the dealer.
12. From the papers produced before us by the Counsel, the stained glass itemmaking process is essentially the fabrication and painting on glass. Even though it is not the traditional item of arts and crafts popularly practiced in the rural areas, the dealer has averred, the process of painting and embellishing on glass is, in some forms, prevailing in various parts of India, particularly the Western Coast, Gujarat and Rajasthan. The dealer has made certain innovations and modifications to the original art and is selling the items, admittedly, at much higher prices than available in the rural India, through his outlets in Delhi.
13. From the above, it is appreciated for an article to be produced and marketed as “Handicraft”, 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 objet d’art, and not merely an ‘Handicraft’, even if it is produced locally and handcrafted. It 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 “Handicraft” and by their inclusion under the heading “Handicraft” in the III Schedule of the DVAT Rules.
14. I have heard arguments of both the sides and perused the documents available on record. 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%. Held accordingly.

As far the hand-painted stained glass items, I am inclined that they can be classified under the category “Handicraft” in view of their some local geographical identification which have been modified and innovated upon, and employed artisans and being produced locally to attract inclusion under Schedule III and attracting 4% VAT. Held accordingly.
