

**SUPREME COURT OF INDIA**

Commissioner of Central Excise, Surat

Vs.

Besta Cosmetic Limited

C.A.No.7609 of 1999

(C. K. Thakker, Mrs.Ruma Pal and Arijit Pasayat JJ.)

09.03.2005

**ORDER**

1. This appeal has been preferred from the decision of the Tribunal by which it rejected the appeal preferred by the appellant from the order of the Collector (Appeals), Central Excise Ahmedabad. Both the fora have concurrently held that for the purpose of valuation of the respondent's products under Section 4 of the Central Excise Act, as it stood at the relevant period of time, Bulsara Hygiene Products Ltd. (hereinafter referred to as 'BHPL') which marketed the appellant's goods could not be said to be related person.

2. The appellant has questioned the finding on the factual basis (1) that both the assessee and BHPL had an equal interest in a partnership concern, namely, Bulsara extrusions; and (2) that they had one common Director and that one of the Directors of the assessee was the Company Secretary in BHPL.

3. The decision of this Court in Union of India and others v. Atic Industries Ltd. - (S.C) has clearly stated that for the purpose of Section 4, a concern would be taken to be the related person if there is a reciprocity of interest between the assessee and such allegedly related person, interest being defined as shareholding. The interest claimed in this case by the appellant is not an interest of the assessee in BHPL or of BHPL in the assessee but in a third concern, which is not relevant for the purpose of Section 4 of the Act.

4. As far as the common Directors are concerned, this Court has in Alembic Glass Industries Ltd. v. Collector of Central Excise & Customs which is reported in 7, held that

"The fact that two public limited companies have common Directors does not mean that the one company has an interest in the business of the other."

5. It is not in dispute that both the assessee and BHPL are public limited companies. The ratio of Alembic Glass Industries Ltd., therefore, would be fully applicable.

6. Additionally, before us, a ground was sought to be raised that BHPL bears the entire advertisement cost of the product of the assessee. This was not a ground which was urged on behalf of the Revenue at any stage of the proceedings and we do not permit them to raise it now. This appeal is accordingly dismissed without any order as to costs.

In C.A. Nos. 4973-4974/2002, 3932/1999, 7541/2002:

7. These appeals are disposed of in terms of the order passed in C.A. No. 7609/1999.