

SUPREME COURT OF INDIA

Commissioner of Central Excise, Belgaum

Vs.

Messrs Akay Cosmetics Private Limited

C.A.No.336 of 2001

(S.N.Variava and Dr. A.R.Lakshmanan JJ.)

01.04.2005

JUDGMENT

S. H. Kapadia, J.

1. This is an appeal filed by the revenue under section 35-L (b) of the *Central Excise Act, 1944* (for short "the 1944 Act") against the decision of the Customs, Excise and Gold (Control) Appellate Tribunal, Chennai (hereinafter referred to as "the tribunal") dated 28.2.2000 in Appeal Nos.E/Stat/77/2000 and E/122/2000, remanding the matter to the Commissioner (Appeals).

2. M/s Akay Cosmetics (P) Ltd. (assessee herein) was the manufacturer of instant hair colour sold under the brand name "Bigen" falling under chapter sub-heading 3305.90 of the schedule to the *Central Excise Tariff Act, 1985*. They were selling their entire production to M/s Namaru Coiffure (for short "M/s Namaru"). There was a dispute on the valuation of goods for the period 1/88 to 3/93. The assessee had claimed deduction from the assessable value in respect of seven items of expenditure, namely, secondary packing, turnover tax, freight, insurance, octroi, handling charges and cost of bought-out items.

3. By judgment and order dated 6.1.2000, the tribunal set aside the demand for differential duty raised by the department for the period 1/88 to 8/88 for want of show-cause notice. By the said judgment, the tribunal allowed the assessee's appeal claiming deduction for the aforesaid seven items of expenditure for the period 9/88 to 3/91. However, in view of the change in organizational set-up under agreement dated 2.1.1991, the tribunal remanded the matter to the Commissioner (Appeals) to reconsider the question of "related person" under section 4(4)(c) of the said Act for the period 4/91 to 3/93.

4. Aggrieved by the decision of the tribunal dated 6.1.2000, the department came to this Court by way of civil appeal under section 35-L(b) of the Act.

5. By judgment delivered by this Court today in the case of Commissioner of Central Excise, Belgaum v. M/s Akay Cosmetics Pvt. Ltd. [Civil Appeal Nos.3792-3803 of 2000], this Court

has partly allowed the department's appeal. However, the order of remand on the question of "related person" during the period 4/91 to 3/93 has been upheld.

6. In the present appeal, 11 show-cause notices were issued by the department calling upon the assessee as to why the deduction in respect of the above seven items should not be disallowed for the period 4/93 to 6/97. Since the question of "related person" had been remanded to Commissioner (Appeals) by the tribunal under its earlier order dated 6.1.2000, the dispute on the same point of "related person" for the period 4/93 to 6/97 was also required to be remanded to the Commissioner (Appeals). In the circumstances, we do not find any infirmity in the impugned judgment.

7. Before concluding, we may point out that in the case of *Commissioner of Central Excise, Belgaum v. Akay Cosmetics (P) Limited reported in*¹, it has been held that on and after 1.4.1991, the two entities, namely M/s Akay Cosmetics (P) Ltd. and M/s Namaru were not related persons.

8. For the aforesaid reasons, there is no merit in this civil appeal and the same is accordingly dismissed, with no order as to costs.

¹2004 Indlaw CESTAT 30(T)