

COMMISSIONER OF CENTRAL EXCISE, BELGAUM

v.

M/S. AKAY COSMETIC (P) LTD., HUMBLI

APRIL 1, 2005

[S.N. VARIAVA, DR. AR. LAKSHMANAN AND S.H. KAPADIA, JJ.]

Central Excise Act, 1944;

Ss. 4(4)(c) and 35 (C)/Central Excise Tariff Act, 1985; Tariff Heading 3305.90 :

Valuation—Levy of excise duty—Instant hair colour/Bigen—Tariff Heading 3305.90—Claim of deduction in respect of certain items of expenditure—Held: In view of the change in the organizational set up of the assessee, the question of related person ought to be decided first before deciding the claim of the deduction—Since the question was already answered by the Supreme Court in another case between the same parties, appeal dismissed on merit.

Respondent-assessee, manufacturer of instant hair colour, brand name “Bigen”, selling their entire production to M/s. Namaru Coiffure (M/s. Namaru). There arose a dispute as to the valuation of the goods as the assessee had claimed deduction of certain items of expenditure from the assessable value for the period 1/88 to 3/93. The Tribunal allowed the claim for certain period and remanded the matter to Revenue to reconsider the question of ‘related person’ due to change in organizational set up in order to determine the duty for the remaining period. Hence the present appeal.

Dismissing the appeal, the Court

HELD : 1.1. The Tribunal allowed the assessee’s appeal claiming deduction for the 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 Revenue to reconsider the question of “related person” under Section 4(4)(c) of the Central Excise Act for the period 4/91 to 3/93. [143-A]

A 1.2. Since the question of “related person” had already been remanded to Revenue by the Tribunal, the dispute on the same point for the period 4/93 to 6/97 was also required to be remanded to the Revenue. In the circumstances, no infirmity is found in the impugned judgment.

[143-E]

B 1.3. This Court, later, in the case of *Commissioner of Central Excise, Belgaum v. Akay Cosmetics (P) Limited* held that on and after 1.4.1991, the two entities, namely, *M/s. Akay cosmetics (P) Ltd.*, the Respondent and his sole distributor, *M/s. Nemaru*, were not related persons. Since the question was already answered, the appeal is dismissed on merit. [143-F-G]

C *Commissioner of Central Excise, Belgaum v. Akay Cosmetics (P) Limited*, (2004) 167 ELT 253 (T), relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 336 of 2001.

D Form the Judgment and Order dated 28.2.2000 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in F.O. No. 298/2000 WZB in A. No. E/STAT/77/2000 and E/122 of 2000.

K. Swamy, Tufail A. Khan, Rupesh Kumar, P. Parmeswaran and B. Krishna Prasad for the Appellant.

E Anoop Choudhary and Rajesh Kumar with him for the Respondent.

The Judgment of the Court was delivered by

F **KAPADIA, J.** 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).

G *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 Nemaru Coiffure* (for short “*M/s Nemaru*”). 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

H in respect of seven items of expenditure, namely, secondary packing, turnover

tax, freight, insurance, octroi, handling charges and cost of bought-out items.. A

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. B

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. C

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. D

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. E

Before concluding, we may point out that in the case of *Commissioner of Central Excise, Belgaum v. Akay Cosmetics (P) Limited* reported in (2004) 167 ELT 253 (T), 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. F

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

S.K.S.

Appeal dismissed.