

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 4186 OF 2000

Commissioner of Central Excise,
Appellant (s)
Mumbai.

Appellant

Versus

Universal Luggage Manufacturing Co.
Respondent (s)
Ltd.
(with office report)

Respondent

With
Civil Appeal No. 277 of 2001 (With office report)

Date: 09/11/2005 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant(s) Mr. T.S. Doabia, Sr. adv.
Mr. Shailender Sharma, Adv.
Mr. Jagjit Singh Chhabra, Adv.
Mr. P. Parmeswaran, Adv.

For Respondent(s) Mr. Dushyant A. Dave, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Mr. Harshad V. Hamed, Adv. for
M/s. K.J. John & Co.

UPON hearing counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order. No costs.

(J.S. Rawat)
Court Master
Court Master

(Kanwal Singh)
Court Master

[Signed order is placed on the file].

CIVIL APPELLATE JURISDICTION

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O R D E R

Commissioner of Central Excise, Mumbai-II, the appellant in these appeals, aggrieved against the orders of the Customs, Excise & Gold

(Control) Appellate Tribunal, Mumbai (for short "the Tribunal")

upholding the orders passed by the authorities below, has filed the present

appeals. The assessee, namely, M/s. Universal Luggage Manufacturing

Co. Ltd., Mumbai (for short "the assessee") is the respondent in these

appeals.

According to the appellant, the assessee is engaged in the manufacturing of moulded luggage falling under Chapter Sub-Heading No.

4201.00. The assessee floated a 100 per cent subsidiary company of its

own under the name and style of M/s. Aristocrat Marketing Ltd. (for short

"the AML") and started routing the bulk of their sale to its dealers through

the subsidiary company, i.e., AML, thereby reducing the assessable value

of its products w.e.f. 1st of June, 1987. Investigations revealed that the assessee had floated AML and shifted some of the advertising expenses which is to be included in the assessable value to AML with a deliberate intention of reducing the assessable value and thereby evading excise duty.

The Collector of Central Excise, Bombay-II (for short "the Collector") issued a show cause notice to the assessee on 29th of June, 1990 to show cause as to why (i) the prices (after the permissible deductions) at which the goods were sold by AML to their dealers should not be taken as the assessable value for the purpose of charging central excise duty; (ii) the differential duty should not be recovered from the assessee under Section 11A(1) of the Central Excise and Salt Act, 1944 read with rule 9(2); (iii) penalty should not be imposed upon the assessee under Rule 173Q of the Central Excise Rules, 1944; and (iv) the plant, building, land, machinery, etc. should not be confiscated under the provisions of rule 173Q?

The respondent contested the notice. It was admitted that AML is a related person to the assessee. The notice was discharged by the Collector holding that there was no evasion of the excise duty by the assessee and that the assessee had cleared the excisable goods to AML at the factory gate at the same price at which it had been cleared to the dealers including the Canteen Stores Department (CSD). Since the assessee had sold the goods at the factory gate to AML on the same price

at which it had been sold to other dealers and CSD, the AML although a related person, was not shown any favour or that the sale made to AML was not done to evade the excise duty. The Collector in his order recorded two significant findings, which are as under:

(i) "On close perusal of records, I find that the assessee had filed Price Lists i.e. Proforma-I with effect from 1.6.1987 as stated in the Show Cause Notice. The assessee had cleared excisable goods to the tune of Rs.46,63,80,823.64 during the period June 1987 to May, 1988, at their declared prices. During the relevant period, sales to M/s. AML were Rs.29,88,30,105.00, sales to dealers were Rs.3,21,08,308.00, sales to Canteen Stores Department were Rs.13,31,39,043.49 and sales to others i.e. Export and DGS&D were Rs.23,03,367.15."

(ii) "From the sales pattern of M/s. ULM, it can be observed that M/s. ULM had effected a total sales of Rs.29,88,30,105.00 to M/s. AML and to others a total sales of Rs.16,75,50,718.64 (i.e. to dealers, CSD, DGS&D and Exports) during the period January, 1987 to May, 1988. Similarly, the sales effected during the period June, 1988 to March, 1989 were Rs.1,841.86 lakhs to M/s. AML and to others were Rs.1,369.39 lakhs. (i.e. to Dealers, CSD). All the sales had been effected at the price filed by the assessee in Proforma-I. It is, thus, evident that no special consideration had been extended

to M/s. AML, which is a subsidiary concern of M/s. ULM; further the sales effected to CSD, Exports, DGS&D are covered within the meaning of Section 4(1) (a) as discussed herein before."

The aforesaid findings of the Collector have been upheld by the

Tribunal by observing thus:

"..... It was, and is the stand of the respondent, and not disputed by the department, that the price at which the goods are sold to different classes of buyers is the same price at which it sold the goods to AML."

Counsel for the parties have been heard.

It is not disputed that the sales made to the persons other than the related person, were of significant quantity, viz, for the period from 1st

June, 1987 to March 1988 the sales to persons other than the related person was to the tune of nearly 36% and for the period from June 1988 to March 1989 the same was to the tune of nearly 43%. Thus, in our view, the price at which the goods were sold to the persons other than the related person could form the basis for determining the value of the goods for the purposes of levying duty thereon. Since the assessee had cleared the goods by way of sale in favour of a related person at the same price at which it had been sold to other buyers, we are inclined to accept the view taken by the Tribunal as well as that of the Collector.

For the reasons mentioned above, we do not find any merit in these appeals and dismiss the same with no order as to costs.

.....J.
(ASHOK BHAN)

New Delhi;
November 09, 2005.

.....J.
(ARUN KUMAR)