

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. 895 OF 2001

COMMISSIONER OF CENTRAL EXCISE, KANPUR  
(s)

Appellant

VERSUS

M/S LML LTD.  
t(s)

Respondent

(with office report)

Date: 03/08/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. A.Subba Rao, Adv.

Mr. Ashok K. Srivastava, Adv.for

Mr. B.K. Prasad, Adv.

For Respondent(s)

Mr. R. Santhanam, Adv.

Mr. R.Singhvi, Adv. for

Mr. Ashok K. Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal is accepted; order under appeal is set aside and the case is remitted back to the Tribunal for recording a clear cut finding on facts and law. All contentions are left open.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 895 OF 2001

Commissioner of Central Excise, Kanpur

Appellant(s)

Versus

M/s LML Ltd.

Respondent(s)

O R D E R

This appeal is directed against the order passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (for short 'the Tribunal') in Appeal No. E/1266/98-A whereby the Tribunal has set aside the order under appeal being without jurisdiction. The additional demand confirmed by the Commissioner and the penalty imposed under Rule 173Q of the Central Excise Rules, 1944 (for short 'the Rules') have been vacated.

The short facts for determination of the controversy involved are

as under:

The issue involved in the present appeal is as to whether the determination of the assessable value of the product of the respondent assessee (LML scooter) at the factory gate. The Assistant Collector passed an order against which an appeal was preferred before the Collector (Appeals). Collector (Appeals) by its order dated 30.6.1992 confirmed the demand amounting to Rs.24,18,712.00 and also imposed penalty of Rs.15,00,000.00 under Rule 173Q of the Rules.

Aggrieved against the aforesaid order, the assessee filed an appeal bearing No. E/4697/92-A before the Tribunal. The Tribunal by order dated 30.1.1995 set aside the order of the Collector dated 30.6.1992 and remitted the case to the Collector to determine the quantum of duty with reference to two issues i.e. (i) realisation of transit insurance and (ii) on expenditure incurred by ARS (authorised representative) on the salaries of the FSEs (Field Service Engineers) on verification of documents/certificates; other seven items regarding which the assessee claimed that these expenditures incurred were post removal activities and not liable to be included in the assessable value.

Parallel to these proceedings, another proceedings relating to the determination of assessable value in terms of wholesale and retail sale for the period from January, 1984 till May, 1987 (trade discount) were going on. The Tribunal by its order dated 30.3.1998 held that the trade discount

to the dealers be given at the rate of Rs.325/- per vehicle from the declared retail price.

In pursuance to the order of remand dated 30.1.1995, the Commissioner passed an order dated 31.3.1998 confirming the demand of Rs.29,94,789.92 under Rule 9(2) of the Rules read with proviso to Section 11A(1) of the Central Excise Act, 1944. Penalty of Rs. 20 lacs under Rule 173Q of the Rules was also imposed.

Aggrieved against the aforesaid order, assessee filed an appeal before the Tribunal which has been disposed of by the impugned order.

The Tribunal, without fixing the assessable value and without setting aside the order of the Commissioner under appeal passed in pursuance to the order of remand dated 30.1.1995 on merits, accepted the appeal by observing that in view of its earlier order dated 27.11.1989 which was confirmed by this Court in Civil Appeal Nos.3673-3676 of 1990, the Commissioner being subordinate authority is bound by the same and is only to implement the orders of the Tribunal. The order of the Tribunal dated 30.1.1995 by which the case was remitted back to the Commissioner for determining the assessable value by taking into consideration certain expenses has to be taken to a logical end and the same cannot be ignored. After the order has been passed by the Commissioner pursuant to the order of remand dated 30.1.1995, the same has to be decided on merits and cannot be deemed to be concluded by an earlier order passed by the Tribunal which was confirmed by this Court.

The facts are not very clear. Even counsel for the parties could not give us the clear facts in a chronological order.

For the reasons stated above, this appeal is accepted; order under appeal is set aside and the case is remitted back to the Tribunal for recording a clear cut finding on facts and law. All contentions are left open.

.....J. ....  
(ASHOK BHAN)

.....J. ....  
[LOKESHWAR SINGH PANTA]

New Delhi;  
.....J. ....  
August 03, 2006. (MARKANDEY KATJU)