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C.A.No. 3638-3644 OF 2000

ITEM No.103

Court No.11

SECTION III

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

Civil Appeal Nos. 3638-3644 of 2000

COMMISSIONER OF CENTRAL EXCISE, MEERUT

Petitioner(s)

VERSUS

T.C. HEALTH CARE (P) LTD.

Respondent (s)

(With application for permission to place addl. documents on record  
and office report)

Date : 31/10/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE

HON'BLE MR. JUSTICE ASHOK BHAN

For Petitioner (s) Mrs. Nisha Bagchi, Adv.  
Mrs. Rekha Pandey, Adv.  
Mr. D. Manish, Adv.  
Mr. B.K. Prasad. Adv.

For Respondent (s) Mrs. Joseph Vellapally, Sr. Adv.  
Mr. Shailendra Swarup, Adv.  
Ms. Bindu Saxena, Adv.  
Ms. Amita Rajora, Adv.  
Ms. Puja Swarup, Adv.

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

.....L.....I.....T.....T.....T.....T.....T.....J.....  
.SP2

Appeal is dismissed.

.SP1

Sushma (Ramesh Chand)  
Court Master

Signed order is placed on the file. ~

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3638-3644 OF 2000

Commissioner of Central Excise, Meerut. & & .. Appellant (s)

Versus

## O R D E R

By an order made in the adjudication proceedings on 27th of November, 1997, the Commissioner, Central Excise, Meerut-I held M/s.T.C.Health Care (P) Ltd. (respondent herein) had mis-declared the assessable value of the products manufactured by it by suppressing the actual price of such products. Hence, it held them as having contravened Rule 9(1), 52A, C, 173F and 173G of the Central Excise Rules and raised a demand for a sum of Rs.4,57,51,508.17 (Rupees four crores fifty seven lacs fifty one thousand five hundred eight and paise seventeen only) under the provisions of Section 11 of the Central Excise Act. He also levied an equivalent amount as penalty under Rule 173Q for contravention of the above said provisions of the Rules. While making the said order, the said Commissioner came to the conclusion that the transactions between the Modi Revlon (P) Ltd. and the respondents were not truly commercial transactions and were tainted by extra-commercial considerations and the transactions between the said Modi Revlon and the respondents are not at arm s length. He also held in view of the fact that it was not possible for him to arrive at the actual additional considerations received by the respondents by following the procedure prescribed under Rules 5 and 6 of the above said Rules, he invoked the power vested under Rule 7 of the said Rules and made a best of judgment assessment to come to the conclusion what is the value of the mis-declared goods as well as the penalty to be levied.

Being aggrieved by the said order, the respondent approached the Customs Excise and Gold (Control) Appellate Tribunal (the tribunal ) by way of an appeal. The said tribunal on a reconsideration of the material on record came to the contra conclusion that the department had failed to establish that, as a matter of fact, there was any extra-commercial consideration in the transactions between the appellants and the Modi Revlon. In this process, the tribunal also came to the conclusion that Modi Revlon had entered into similar contracts with other manufacturers for getting cosmetics and other allied articles manufactured for them and those manufacturers were also manufacturing the very same product as manufactured by the respondents, hence, those transactions were similar to the one with which the respondents herein was concerned. The tribunal further held that though the Commissioner noticed the said fact he did not properly appreciate the said material which has vitiated the finding given by the Commissioner. The tribunal also independently considered the various other materials available on record and came to the conclusion that the findings of the Commissioner cannot be sustained. Hence, it allowed the appeals and set aside the orders of the Commissioner.

In these appeals, on behalf of the Union of India, it is contended that the transactions which Modi Revlon had entered into with other manufacturers were not similar transactions, hence, the tribunal ought not to have placed any reliance on the same. We have heard the learned counsel for the parties as also perused the records. In the instant case, we notice that the tribunal has considered all the material on records and has justly disagreed with the findings of the Commissioner. Apart from the fact that the tribunal is the final forum of facts, we also do not find any perversity in the findings of the tribunal nor do we find any error which calls for interference by us. The question involved in these appeals being pure questions of fact. We are not inclined to interfere with the findings of the tribunal, hence, these appeals fail. No costs.

& & & & & & & & J.  
(N.Santosh Hegde)

& & & & & & & & J.

(Ashok Bhan)

New Delhi;  
October 31, 2001.