select * from advocate_master where adv_code = '150'

FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 21/02/2018

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70343/2018-EX[DB] dated 06/02/2018

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/590/2009	**Commissioner of Central Excise and Service Tax-Lucknow** 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH 226001
		Name and Address of Respondent
2		Phool Chand Sales Corporation 24, Batase Wali Gali, Aminabad, Lucknow.,,

Copy To

3Advocate(s) / Consultant(s):

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
Uttar Pradesh

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/590/2009-EX[DB]

(Arising out of Order-in-Appeal No. 210-CE/LKO/2008 dated 16/12/2008 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

Commissioner, Central Excise, Lucknow	**Appellant**
Vs.	
M/s Phool Chand Sales Corporation	**Respondent**

Appearance:

Shri Rajeev Ranjan (Joint Commr.) AR	for Appellant
Shri A.P. Mathur (Advocate)	for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	11/12/2017
Date of Decision	:	11/12/2017

FINAL ORDER NO-70343/2018..........

Per: Anil G. Shakkarwar

Present appeal filed by Revenue is directed against Order-in-Appeal No. 210-CE/LKO/2008 dated 16.12.2008 passed by Commissioner (Appeals), Customs, Central Excise and Service Tax, Lucknow.

2. Brief facts of the case are that the respondents were engaged in the manufacture of Pan Masala and Gutkha having brand name as Phool Chand. Through Order No.

05/2008 dated 17.07.2008 annual capacity of production was determined by Jurisdictional Deputy Commissioner taking into considerations that eight installed machines were operational. Aggrieved by the said order respondent preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) has scrutinized the said order dated 17.07.2008. The learned Commissioner (Appeals) observed that in Column No. 6 of the declaration filed by respondent in Form-1 on 10.07.2008, the number of machines installed in the factory have been shown as eight out of which seven have been shown in sealed condition and inferred that on 10.07.2008 only one machine was in operation and for all practicable purposes the remaining seven machines were technically uninstalled as they were sealed by the Department in such a manner that they could not be operated. He further observed that on 01.07.2008 which was the effective date for the said rules to come into operation, the number of machines in operation were five as record show that out of total eight packing machines all eight were sealed by Range Superintendent on 17.05.2008, out of which sealed of five machines were opened by the said Superintendent on 19.05.2008 and thus three machines still remained sealed and as a result three machines remained uninstalled and un-operative. Therefore, he modified the said order dated 17.07.2008 and determined five machined as installed for determination of duty payable. Aggrieved by the said order Revenue is before this Tribunal.

4. The ground of appeal by Revenue is that the number of installed packing machines shall be determined to be operating packing machines for the month and that the learned Commissioner erred in holding that three machines still remained sealed and in consequence of uninstalled and un-operative and further argued that once a machine is installed, it shall be determined to be an operating packing machines.

5. Heard the learned AR who has presented the grounds of appeal.

6. Heard the learned counsel for the respondent who has submitted that it is clearly established through the finding of learned Commissioner (Appeals) that three machines were sealed in such a manner that they were un-operative and, therefore, the order passed by learned Commissioner (Appeals) is legal and proper.

7. Having considered the rival contentions and on perusal of records, we are not in position to appreciate the argument of Revenue that once a machine is installed, it shall be treated as operational machine even if the machine was sealed in such a manner that it became un-operative. We do not find any merit in the grounds raised by Revenue. We,

therefore, reject the appeal filed by Revenue. The respondent shall be entitled for the consequential relief as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Ankit

प्रमाणित प्रति/Certified true copy
05/03/18

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001