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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/6161/2004-6163/2004 - EX[DB]   Date 17/06/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E.LUCKNOW
7-A,ASHOK MARG LUCKNOW
C.C.E.LUCKNOW   Appellant
Vs
M/S HINDUSTAN LEVER LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 399-401/2009- **EX[DB]** dated 29-5-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S HINDUSTAN LEVER LTD.
   VILL.ASRAULI,ETAH-ALIGARH ROAD,ETAH
2. Adv. / Consult
   SH.P.K.MITTAL,ADV.,
   171,CHITRA VIHAR,DELHI-92

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 6161-63 OF 2004-EX

[Arising out of Order-in-Appeal No. 266-268-CE/2004 dated 31.8.2004 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CCE, Lucknow — Appellant

Vs.

M/s. Hindustan Lever Ltd., — Respondent

Appearance:

Shri P.K. Singh, D.R. for the Revenue;
Shri P.K. Mittal, Advocate for the respondents

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of hearing/decision: 29th May, 2009

Final **ORAL ORDER NO.** 399-401/09 **dated** _________

Per P.K. DAS:

Since common issue involved in these appeals all are being taken together for disposal.

2. Revenue filed these appeals against order of the Commissioner (Appeals) whereby it has been held that the respondents are eligible for deduction on equalized freight.

3. Heard both sides and perused the records.

4. The main contention of the learned D.R. is that the respondents had not produced any evidence before the original authority in respect of equalized freight. He submits that the Commissioner (Appeals) allowed the appeals after examining the statements which were not placed before the original authority and no opportunity was given to the Revenue to present their case. In this connection, he drew the attention of the Bench to Rule 5(3) of Central Excise (Appeals) Rules, 2001 whereby the Commissioner (Appeals) shall not take any evidence produced by the appellant

unless the adjudicating authority or an officer authorized in this behalf by the said authority has been allowed reasonable opportunity to examine the evidences.

5. On perusal of the order passed by the Commissioner (Appeals) we agree with the submission of the learned D.R. Rule 5 of Central Excise (Appeals) Rules, 2001 provides production of additional evidence before the Commissioner (Appeals). Rule 5(2) of the said Rules provides that no evidence shall be admitted unless Commissioner (Appeals) records in writing the reason for its admission. Sub-rule (3) of Rule 5 of the said Rules, is reproduced below:-

> "(3) The Commissioner (Appeals) shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorized in this behalf by the said authority has been allowed a reasonable opportunity, -
>
> (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
>
> (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1)."

6. In the present case, it is seen that the Commissioner (Appeals) allowed the deduction on the basis of statements placed by the respondents. Admittedly, the said statement was not produced before the

original authority. There is no indication in the impugned order that the Revenue was given any opportunity to defend their case.

7. In view of that, we set aside the impugned order and remand the matter to the original authority to examine the deduction on equalized freight as claimed by the respondents. Needless to say that the Respondent shall be given reasonable opportunity to put forward its case before passing any order. All the appeals are allowed by way of remand.

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK