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

Appeal No. E/1628/2007 – SM[BR]   Date: 20/03/2009

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 PHOOL CHAND SALES CORPN.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 222 / 2009 –SM[BR] dated 16.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S PHOOL CHAND SALES CORPN.
   24, BATASHEWALI GALI, AMINABAD, LUCKNOW.
2. Adv. / Consult SHRI K.K. ANAND ADV.
   A-5, [BASMENT] LAJPAT NAGAR –III
   NEW DELHI -24.

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI.

Excise Appeal No. 628 of 2007
[Arising out of order-in-appeal No. 06-CE/LKO/07 dated 29.1.2007 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals), Lucknow].

Date of Hearing/ Decision : 27.02.2009

CCE, Lucknow — Appellant

Versus

M/s Phool Chand Sales Corporation — Respondent

Appeared for Appellant- Mr. Sansar Chand, DR
Appeared for Respondent - Mr. Hemant Bajaj, Advocate

CORAM: Hon'ble Mr. D.N. Panda, Judicial Member

Final Order No. 222/09-SM(BR)

Per D.N. Panda

Learned Counsel Mr. Hemant Bajaj submits that the review order passed by the reviewing authorities is not in consonance with the provisions laid down in Section 35(2) of the Central Excise Act, 1944. He submits that the review order is not dated and only one Commissioner Shri Narayan Basu while passing reviewing had dated the same as 04.06.2007 under his signature. But the other Commissioner Sh. Sheo Narayan Singh who has signed is without dating the same. The review order does not show when that was issued. He relies on the ratio laid down by Hon'ble Gujarat High Court in the case of CCE&C, Surat-I vs. Shree Ganesh Dying & Printing Works reported in 2008 (89) RLT 549 (Guj.) and submits that in para 11 and 14 of the judgement, the Hon'ble High Court has held that Tribunal has power to examine whether there was compliance to statutory mandate of Section 35(2) of the Central Excise Act, 1944. He pleads that the review order is an abrupt conclusion without being reasoned and speaking. The empty formality followed by the Authorities to seek appeal remedy for revenue is abinitio void.

2. Learned DR object and submits that the review was done properly by two authorities.

3. Heard both sides and perused the record.

4. There is no second opinion that an order to meet scrutiny should be reasoned and speaking. The Hon'ble High court of Gujarat has held in the judgement cited by the learned Counsel that the pre-requisite of opinion is mandatory. To come to the conclusion that the order is neither legal nor proper, the governing facts of the case should have received attention of the Reviewing authorities in the review order itself. But that has not been done in this case. Therefore, relying on para 14 of the judgement of the Hon'ble High Court of Gujarat, it can be said that there is no compliance to section 35B(2) of Central Excise Act, 1944 by the reviewing authorities who have overlooked the permission of law while discharging their duty in the eyes of law. Revenue's appeal is accordingly dismissed not being maintainable.

[Dictated and pronounced in the open Court]

[D.N. Panda]
Judicial Member

[Pant]