

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/3850/2006-3851/2006 – SM[BR]

Date 05/02/2009

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

To :

1. M/S HARSINGAR GUTKHA PVT LTD
 2. SH MAHESH SINGH PATEL
- 33-34, GAURA BAGH, KURSI ROAD, LUCKNOW.

M/S HARSINGAR GUTKHA PVT LTD

C.C.E.LUCKNOW

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of **Final order No. 115 – 116 / 2009-SM[BR]** dated 2.2.2009
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E.LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult

MR.K.K ANAND

A-5, BASEMENT, 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 Publications (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), Thyagarava Road, T. Nagar, Chennai

- 13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, 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

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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.3850-51/2006-SM(Br),

(Arising out of order in appeal No. 125 &126/cEX/LKO/06 dated
10.8.06 passed by the Commissioner of Central Excise (Appeals),
Lucknow)

1.M/s Hasingar Gutkha Pvt Ltd
2.Sh Mahesh Singh

Appellant

Vs

CCE, Lucknow

Respondent

Appeared for Appellant : Shri Hemant Bajaj, Advocate
Appeared for Respondent : Shri R.K. Verma, DR

Date of Hearing: 16.1.09

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

Final Order No. 115-116 /2009-SM(BR)

Per D.N. Panda:

Learned Counsel Shri Hemant Bajaj basically submits that the appellant has been dealt to the detriment of justice ignoring pleadings of the appellant made in reply to show cause notice. He challenges that without a basis, show cause notice was issued. He pleaded that when there was no examination of the very basis of show cause notice itself and the evidence adduced by the appellant was not considered as stated in para 12 of statement of facts annexed to Appeal Memo, there is mis-carriage of justice.

Accordingly, the orders of the authorities below are not sustainable.

2. The learned DR Shri R.K. Verma supports the order of the authorities below and submits that charges were rightly brought by show cause notice and the Appellants have been put to test before the authorities. When they failed to reply or met the scrutiny of law, the adjudication order was passed in accordance with law.

3.1 Heard both the sides and perused the record.

3.2 Perusal of para 9 of the order does not throw light whether the learned appellate authority has gone into the basis of charge and materials on record to test the charges. He has come to the conclusion and mechanically confirmed the order of adjudication. If such a practice is followed that shall not get sanction of law and that shall result in injustice. Accordingly, this appeal calls for remitting the matter to the learned Adjudicating Authority to examine all the charges in the show cause notice, basis of charge, materials discovered by investigation, evidence adduced by the appellant and available on record, pleadings of the appellant made in reply to show cause notice and further legal pleadings, if any, that may be made in the course of hearing before him. The learned Adjudicating Authority granting fair opportunity of hearing shall pass a reasoned and speaking order in respect of the concerned charges to hold whether sustainable or not. Such exercise shall meet the scrutiny of law.

3.3 In the result the appeal is remitted.

3.4 In view of the remand of appeal in Appeal Case No.3850/06, the appeal registered as Appeal Case No.3851/06 also stands remitted to the same Adjudicating Authority who shall do justice to the appellants in the light of decision aforesaid.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*