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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/1058/2007 – SM[BR], E / MISC / 211 / 2009 –SM[BR] Date 27/08/2009

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

To :
M/S PHOOL CHAND SALES CORPORATION.
24, BATASHE WALI GALI, AMINABAD, LUCKNOW.

M/S PHOOL CHAND SALES CORPORATION. Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1084 / 2009 –SM[BR]&M / 183 / 2009 dated 21.8.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   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. 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
(SM Appeal Branch)

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

E/Appeal No.1058/2007, E/Misc 211/09 -SM(Br)

(Arising out of order in appeal No. 191/CE/2006 dated 29.12.06 passed by the Commissioner of Central Excise (Appeals), Lucknow)

M/s Phool Chand Sales Corporation — Appellant

Vs

CCE, Lucknow — Respondent

Appeared for Appellant : Shri Hemant Bajaj, Advocate
Appeared for Respondent : Shri S. Gautam, DR

Date of Hearing: 5.8.09

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

Final Order No. 1084 /2009 SM (BR)
M-183/09 SM(BR)

Per D.N. Panda:

Learned Counsel Shri Hemant Bajaj opposes the order of the authorities below submitting that 13,240 pouches of gutka was not excess quantity found in view of the reconciliation statement submitted to the learned Adjudicating Authority by way of reply to show cause notice at page 7-8. This aspect was not considered by both the authorities below. Similarly for the allegation # 158 pouches of excess laminated rolls, the appellant's grievance is that explanation for the same was given in page 32 of the appeal folder (at page 13 of the reply to show cause notice). Although this aspect was considered, evidence was not properly evaluated by the Authority below. Therefore, the appellant having been deprived of process of natural justice, if the matter goes back to the learned Adjudicating Authority, he may appropriately consider the issue.

2. Learned DR submits that entire adjudication has been done granting fair opportunity of rebuttal and authorities have correctly passed the order.

3. Heard both the sides and perused the record.

4. Grievance of the learned Counsel that the appellant is deprived of the process of justice goes to the root of the matter when page 7-8 of the reply to the show cause notice is perused. A detailed reply was given by the appellant. That has not received attention of the authorities below for examination. Therefore, deprivation from the process of natural justice not being curable at the appellate stage, the matter has to go back to the learned adjudicating authority for proper examination of the entire issue while relevant materials are already before him. Since I have proposed remand of the matter, learned Adjudicating authority may hear grievance of the appellant on both counts i.e. pouches of gutka and laminated rolls. Granting fair opportunity of hearing, passing of a reasoned and speaking order is expected from the learned Adjudicating Authority.

5. In the result, the appeal is remanded setting aside the impugned order.

6. Revenue has made an application for hearing the appeal at an early date. Since the appeal has been heard today, Misc Application of Revenue has become infrucutous.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*