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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CEAC 32/2018 & CM APPL. 27733-27734/2018

LOKNATH PRASAD GUPTA ..... Petitioner

Through: Mr. L. Badri Narayanan, Advocate with Mr. Yogendra Aldak, Mr. Karan Sachdev, Mr. Shrey Ashat, Ms. Apeksha Mehta and Mr. Kunal Kapoor, Advocates.

versus

COMMISSIONER, CENTRAL EXCISE COMMISSIONERATE, DELHI-I ..... Respondent

Through: Mr. Harpreet Singh, Sr. Standing Counsel for respondent with Mr. Suresh Chaudhary, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **17.07.2018**

CM APPL. 27734/2018 *(for exemption)*

Allowed, subject to all just exceptions.

CEAC 32/2018 & CM APPL. 27733/2018 *(for stay)*

Issue notice**.**

Mr. Harpreet Singh, Sr. Standing Counsel for the respondent accepts notice.

The appellant’s grievance is that his appeal to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), which was rejected by the impugned order, has pre-judged the issue with respect to the question of appropriate formula to determine the use of raw materials, even while remanding the matter for fresh adjudication by the Commissioner.

Briefly, the facts are that the appellant had been issued four show cause notices for the period April, 2006 to March, 2010; he had been earlier issued a show cause notice which had invoked the extended period of limitation (2001-2006). The appellant approached the Settlement Commission which after considering all the materials on record applied a formula evolved in para 38 of its final order to arrive at the resultant weight of Tobacco on dry basis as well as the percentage of Snuff contained in the weight of tobacco. It complains before this Court that the appeal for the later period, which according to it concerns a separate product i.e. 'Premium Khaini', did not even consider the basic contentions with respect to the entirely different ratio of raw materials.

This Court has considered the submissions of the parties. The Tribunal, at the very outset, merely cited and relied upon the Settlement Commission's order, particularly para 38 (in para 8 of the impugned order), and proceeded to follow it without addressing itself as to whether in the present case that formula was applicable at all or when adverting or even taking into consideration the appellant's submissions on the merits with respect to the inapplicability of the Settlement Commission's formula in the context of its submissions that the period in question involved a separate product. For these reasons, this Court is of the opinion that the remand order should be appropriately modified. The impugned order is accordingly modified; the Commissioner shall while examining the matter afresh take into consideration the facts of the case as based upon the materials and evidence led before him to determine as to what is the appropriate ratio for deciding the increased weight as well as the percentage of Snuff and Tobacco in respect of the new product 'Premium Khaini' for the period April, 2006 to 07.03.2010.

The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 17, 2018
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