CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO - 3

Excise Appeal No. 870 of 2012-DB
(Arising out of OIO No. 43/COMMR/2012 dated 29/08/2012 passed by Commissioner of Central Excise-RAJKOT)

Mangla Brass Pvt Ltd **Appellant**
Plot No. 6/2, Gidc,Shankar Tekri, Industrial Area,
Jamnagar, Gujarat-361004

-VERSUS-

C.C.E. & S.T.-Rajkot **Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

(i)Excise Appeal No. 871 of 2012 (Harshadbhai L Bhanushali)

(ii) Excise Appeal No. 872 of 2012 Lakhamshibhai V Bhanushali)

(iii) Excise Appeal No. 971of 2012 (CCE & S.T. Rajkot)

(Arising out of OIO No. 43/COMMR/2012 dated 29/08/2012 passed by Commissioner of Central Excise-RAJKOT)

APPEARANCE:
For the Appellant : Shri P.D. Rachch, Adv
For the Respondent: Shri Sameer Chitkara, Addl. Commr. (AR)

CORAM:
HON'BLE MEMBER (JUDICIAL) ,MR.RAMESH NAIR
HON'BLE MEMBER (TECHNICAL),MR.RAJU

MISC. ORDER NO. M/ 10762-10765/2019

Date of Hearing/Decision: 10/04/2019

RAMESH NAIR

The issue involved is the denial of SSI exemption notification 08/2003-CE dated 01/02/2013 on the ground of clubbing of two units of the appellant's company. The entire reliance was made on various panchanama and statements of various persons. Revenue also filed appeal against extending of cum-duty benefit by the Adjudicating authority.

2. Shri P.D. Rachch, Ld. Counsel appearing on behalf of the appellant made various submissions on facts and law points. He also submits the majority of evidences, statements of various persons which were relied upon for confirming the demand. He submits that none of the witnesses whose statement was relied upon, was examined in terms of section 9 (d) of Central Excise Act,1944. Therefore, all the statements recorded cannot be relied upon by the Adjudicating Authority. Since the demand was confirmed by relying on those statementss, the same is not sustainable.

3. Shri Sameer Chitkara, Ld. Addl. Commr.(AR) reiterates the finding of the impugned order. He submits that since the appellant had not asked for the cross examination, the Adjudicating Authority has rightly relied upon statements recorded during investigation.

4. Heard both sides and perused the records. Before going into the facts and law points as argued by both sides, we find that the major reliance was made on the statements recorded under section 14 of the Central Excise Act. Those statements were relied upon while issuing the Show Cause Notice and also for adjudicating the show cause notice. It is observed that before relying upon the statements, Ld. Adjudicating authority has not examined the witnesses, which is mandatory as per the statutory provision under

section 9(d) of Central Excise Act, 1944. Without examining the witness, the statements of the witnesses cannot be used against the assessee. Therefore, we are of the view that the process of examination/cross examination of the witnesses is necessary for completing the adjudicating process. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for fresh adjudication for examining of the witnesses in terms of section 9(d) of the Central Excise Act, 1944. Needless to say that the appellant shall be given opportunity of personal hearing before passing a de novo adjudication. The impugned order is set aside. The appeal is allowed by way of remand to Adjudicating Authority. Revenues appeal is consequential to the demand. Therefore the same is also remanded to the Adjudicating Authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha