

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**COURT NO. I**

**Appeal Nos. E/366,367/2007-DB**

**Date of Hearing/ Decision : 20.03.2018**

[Arising out of Order-in-Appeal No. OIA- 26/Ldh/2006 dated 27.11.2007 passed by the Commissioner (Appeals) Central Excise & ST, Ludhiana]

M/s. Ritesh International Limited : **Appellant**  
Shri Rajiv Arora, Managing Director

**vs.**

Commissioner of Central Excise & ST, Ludhiana : **Respondent**

Appearance:

Shri B.L. Narsimhan, Advocate for the Appellant(s)  
Shri Vijay Gupta, A.R. for the Respondent(s)

**CORAM:**

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**  
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

**Final Order No. 61802-61803 / 2018**

**Per : Ashok Jindal**

The appellants are in appeal against the impugned order demanding duty along with interest and imposing penalty on both the appellants by classifying their goods under heading 38.23 of the Central Excise Tariff Act, 1985.

2. The facts of the case are that the appellant are engaged in the manufactured stearic acid under heading 38.23 of the Central Excise Tariff Act,

1985 and clearing the same on payment of duty. The appellants were also manufacturing the HRBO (Hydrogenated Rice Bran Oil) flakes in the same factory and claiming classification of the HRBO flakes under chapter heading 15.04 of the First Schedule to the Central Excise Tariff Act, 1985 and clearing the same without payment of duty attracted nil rate of duty. An investigation was conducted in the factory premises of the appellant in November, 2003 and samples were drawn which were sent to the CRCL for testing and after not satisfying with the result of the samples, the samples were sent to Shriram Institute for Industrial Research for re-testing. Thereafter the statements of certain buyers were recorded and it was also found during the course of investigation that there was some manipulation was done in the invoices of the suppliers. On the basis of investigation, a show cause notice was issued to the appellant on 29.03.2005 to re-classify the product, namely, HRBO flakes under heading 38.23 of the Central Excise Tariff Act, 1985 on the premise that the appellants were not manufacturing HRBO flakes and they were manufacturing stearic acid, therefore, the appellants were liable to pay duty for the period April, 2000 to December, 2003 by invoking the extended period of limitation. The matter was adjudicated, the demand of duty of Rs. 4,81,90,550/- along with interest was confirmed and equivalent penalty was also imposed on the appellant. A personal penalty was also imposed on Shri Rajeev Arora, Managing Director of the appellant. Aggrieved with the said order, the appellants are before us.

3. Shri B.L. Narsimhan, learned Counsel appeared on behalf of the appellants and submitted that the entire demand was barred by limitation as the fact of manufacturing HRBO flakes was in the knowledge of the department and issue is of classification of the goods manufactured by them i.e. HRBO flakes. It is his submission that the appellants were filing ER-1 returns indicating the clearance of HRBO flakes under chapter heading 15.04 and stearic acid under heading 38.23 separately. It is his further submission that the appellants were filing classification declaration from time to time and in July, 2002, the samples were drawn but no allegations were made against the appellants that they were manufacturing only stearic acid. The classification claimed by the appellant was in the knowledge of the department. Due to failure of verification at the end of the department, the extended period cannot be invoked. It cannot be alleged that there were mis-statement or suppression on the part of the appellants. To support his contention, he relied on the following decisions:

- (i) Hindustan Petroleum Corporation Ltd. vs. CCE-2015 (328) ELT 684 (Tri.-Mum.)
- (ii) Densons Pultretaknik vs. CCE-2003 (155) ELT 211 (SC)
- (iii) Ram Remedies Ltd. vs. CCE-2010 (254) ELT 170 (Tri.-Mum.).

4. It is his further submission that the samples were drawn in the month of July, 2002, no test report was supplied to the appellants and no evidence was on record to show that the department made any conclusive effort for the

same. In the impugned order, the Commissioner himself has observed that *“It is also a fact that the true nature of product manufactured by the noticee could not be seen by naked eye. There is no evidence to show that the department has made any conclusive effort for the same. I am, therefore, of the opinion that manufacturer has also not made true and full declaration of the product being manufactured by them.”*

5. It is his further submission that the adjudicating authority has given finding that no efforts were made by the department to know correct classification, therefore, the allegation of suppression is not sustainable and consequently the extended period cannot be invoked in this case. To support his contention, he relied on the decision of the Tribunal in the case of ***Accurate Chemicals Industries vs. CCE-2014 (300) ELT 451 (Tri.)*** which has been affirmed by the Hon’ble Allahabad High Court reported in ***2014 (310) ELT 411 (All)*** and ***Jammu & Kashmir Cements Ltd. vs. CCE-2014 (314) ELT 334 (T)***.

6. He further submits that during the course of adjudication, the department has recorded the statements of 20 buyers who purchased 7-8% of the total production, and they have made inculpatory statements against the appellants. During the course of adjudication, buyers were called for cross examination, none turned up except one of them, thereafter no one was called for cross examination. Therefore, there is violation of section 9D of the Central Excise Act, 1944. He also submits that the person who was appeared for cross examination has deposed in favour of the appellant during the course

of cross examination. Therefore, the statements of the buyers cannot be relied on to allege that there was mis-statement or suppression on the part of the appellants. To support this, he relied on the decision of Hon'ble Punjab & Haryana High Court in the case of ***M/s. G-Tech Industries vs. U.O.I. in Civil Writ Petition No.12747 of 2016***. He further submits that the statements of the buyers and suppliers, who have not cross examined, cannot be relied upon. He submits that there is no such evidence on record to establish that the product manufactured by the appellant is not HRBO flakes. He submits that the chemical examiner's reports are not conclusive with respect to the nature and composition of the product, therefore, the said reports also do not support the case of the department. He also relied on the decision of the Apex Court in the case of ***HPL Chemicals Limited - 2006 (197) ELT 324 (SC)***.

7. He further submits that HRBO flakes cannot be classified under heading 38.23. Therefore, he prayed that the impugned is to be set aside.

8. On the other hand, learned AR opposed the contention of the learned Counsel and submits that during the course of investigation, the samples were drawn and as per the test reports of the Shriram Institute for Industrial Research, the samples were drawn contained 68% stearic acid. Therefore, it is concluded that the appellant is engaged in the manufacture of stearic acid, the appellant has not given any positive evidence to the department that they were manufacturing HRBO flakes. He submits that during the course of investigation, it was found that the appellants have manipulated the invoices

issued by the suppliers of the goods showing rice bran oil there was intention appellant to mis-declare the goods as HRBO flakes instead of stearic acid.

9. Heard both sides and considered the submissions.

10. On careful consideration of the submissions made by both sides, the case of the Revenue is that the appellant is clearing stearic acid in the guise of HRBP flakes and not paying duty. For that, the Revenue has relied upon the evidences namely,

(a) the invoices issued by the suppliers of the goods,

(b) the statements of the buyers and

(c) test reports and alleged that as these facts suppressed from the department.

11. We have seen all the papers placed before us. The contention of the appellant is that the fact of manufacturing of HRBO flakes and stearic acid were in the knowledge of the department as the appellant has been filing the classification declaration of their products and also regularly filing ER-1 returns showing the clearances of HRBO under chapter heading 15.04 and stearic acid under heading 38.23 separately. In July, 2002, the samples were drawn but the Revenue has failed to produce results of those samples whether those samples have been tested or not. When the fact of manufacturing and clearance of

HRBO was in the knowledge of the department during the relevant time, therefore, no allegation of suppression cannot be alleged against the appellant and the extended period of limitation is not invocable as observed by this Tribunal in the case of Hindustan Petroleum Corporation Limited (supra) wherein this Tribunal has observed as under:

*“6. After considering the submissions, we find that in this case the appellant Company have filed declaration on 23rd October, 2000 to classify their product under sub-heading 2710.90 which was very well in the knowledge of the departmental officers. If the department was of the view that their product is to be classified under sub-heading 3811.00, the investigation would have been started immediately on filing the classification list which they have failed to do so. We also find that the investigation in this case has started in only November 2003 and show-cause notice has been issued in 2005. Therefore, the extended period of limitation is not invocable in this case. Although the appellants have paid duty along with interest and the appellant had not claimed refund of duty and interest paid as they are not contesting the same and only contesting the imposition of penalty. Therefore, it is to seen whether in those circumstances, the penalty under Section 11AC is imposable or not?”*

*7. We have gone through the case laws cited by the learned Advocate wherein the case of Densons Pultretaknik (supra) the Hon’ble Apex Court has held that claiming wrong classification does not amount to suppression of facts. In the case of Markfed Refined Oil & Allied Indus (supra), the Hon’ble High Court of Punjab and Haryana has confirmed the view and observed that once the assessee is a Government organization it is not easy to infer any evasion of duty much less its intention to do so. Therefore, we do not find any force in the contention of the learned SDR, same are turned down. Following the ratio laid down by the decision cited by the learned Advocate we find that the classification list was in the knowledge of the department in October, 2000, therefore allegation of suppression is not sustainable, hence, the extended period of limitation is not invocable in this case. Therefore, in the absence of necessary ingredients of Section 11AC of the Central Excise Act, 1944, penalty is not imposable on the appellants.”*

12. Further, in the case of Ram Remedies Limited (supra), this again has observed as under:

*“3. In this case, by the time the officers visited the unit, there was no manufacturing operation going on and the existing stock was said to be contaminated and, therefore, no samples could be drawn. Further, during the period when the appellant company was manufacturing the product, the departmental offices had never drawn the samples for testing even though the*

*appellant filed classification declaration from time to time and had claimed classification under CETH 2710.90 in such declaration. The first major weakness in the department's case is non-testing of samples. Boiling point range and flash point of the products have been accepted by the appellants. There is no evidence forthcoming from the records of the case about the suitability of the products for use in spark ignition engine. The only evidence available is the statement of Shri A.K. Jain, the production-in-charge, who had admitted that the product had the boiling point within the range as per the tariff heading and the flash point was below 25°C and he had also stated that all these products are having suitable hydrocarbon mixtures for use in spark ignition engine. The appellants contested this by stating that this only reflected the understanding of Shri A.K. Jain but the fact remains that they were selling the product as a solvent to their customers and in the absence of a proper test as regards the characteristics and its end use, mere opinion of their manager would not be sufficient to revise the classification. The decision cited by the Ld. Advocate before us in support of his contention is of M/s. Indu Nissan Oxo Chemical Industries Ltd. v. CCE, Vadodara, as reported in 1998 (101) E.L.T. 201 (Tri.). The Tribunal observed that the department is required to show that the product is suitable for use, which has been judicially determined to mean "actually, practically and commercially fit for the use described". The Tribunal in the cited case also observed that there must be evidence of more than a casual, incidental, exceptional or possible use. The use must be substantial. In this case leave alone producing evidence to show that the product is 'suitable for use', we find that the Commissioner in his order observed that "I find that the use of the goods cannot be criteria for determination of classification of the product. The product has to be classified based on its characteristics and properties". In this case tariff heading under 2710 itself described suitability for use as fuel in spark ignition engine as one of the requirements for classification of the product under this heading. Thus, the order of the Commissioner proceeds on a misunderstanding of the heading. In the absence of any evidence to show any of the customers had used any of the products as a fuel in spark ignition engine or any other evidence in the form of testing of samples, the department's case cannot be sustained as regards the classification. Further, we also find that as regards limitation also it would not be possible to sustain the impugned order. This is because when the tariff heading clearly provides the characteristics of the products and its end use, it was the duty of the departmental officers to draw samples and get the same tested and the officers have failed to do this over a period of three years. Having failed to do this over a period of three years when the appellant had filed classification declaration periodically, show cause notice invoking extended period cannot be issued after five years."*

13. Further in the case of Densons Pultretaknik, the Hon'ble Apex Court has observed as under:-



**"7.** Next question is - whether the Tribunal was justified in invoking first proviso to sub-section (1) of Section 11A. *Prima facie*, it is apparent that there was no justifiable reason for invoking larger period of limitation. There is no suppression on the part of the appellant-firm in mentioning the goods manufactured by it. The appellant claimed it on the ground that the goods manufactured by it were other articles of plastic. For the insulating fittings manufactured by it, the tariff entry was correctly stated. The concerned officers of the Department, as noted above, after verification approved the said classification list. This Court has repeatedly held that for invoking extended period of limitation under the said provision duty should not have been paid, short-levied or short-paid by suppression of fact or in contravention of any provision or rules but there should be wilful suppression. [Re : *M/s. Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore*, C.A. No. 2693 of 2000 etc. decided on 13-1-2003]. By merely claiming it under heading 3926.90 it cannot be said that there was any wilful misstatement or suppression of fact. Hence, there was no justifiable ground for the Tribunal for invoking the first proviso to sub-section (1) of Section 11A of the Act."

14. We have also seen that the appellant has also relied on the decision of this Tribunal in the case of Accurate Chemicals Industries (*supra*) wherein this Tribunal has held as under:

**"7.1** *Though with effect from 1-10-1996, self-assessment has been introduced and the monthly ER-1 return filed by an assessee are not required to be assessed by the Range Superintendent (RO), in terms of the following instructions issued by the Central Board of Excise & Customs (CBEC) not only every ER-1 return filed by an assessee is required to be scrutinized by the RO for correctness of rate of duty applied to the goods cleared, arithmetical accuracy of duties/amounts dues and payable; Cenvat credit availment, valuation etc., this scrutiny must be completed within 3 months and the returns of the units whose annual duty payment is Rs. 1 crore to Rs. 5 crores and more than Rs. 5 crores, are also to be cross checked by the Assistant Commissioner and Additional Commissioner, respectively.*

(1) *Circular No. 249/83/96-CX., dated 11-10-1996 (para 3);*

(2) *Circular No. 311/27/97-CX., dated 15-4-1997 (regarding maintenance of register of scrutiny and reporting progress of scrutiny of ER-1 returns in monthly Technical Report being sent to the Board.)*

(3) *Circular No. 818/15/2005-CX., dated 15-5-2005 issued by C.B.E. & C. under Rule 12(3) of Central Excise Rules, 2002 prescribing two stage scrutiny of ER-1 and ER-3 returns - preliminary scrutiny and detailed scrutiny as per detailed check list prescribed for this purpose.*

**7.2** *From the above Circulars of the C.B.E. & C. regarding scrutiny of ER-1 returns, it is clear that the returns filed by an assessee are required to be subjected to detailed scrutiny in course of which the concerned officer can call for the documents from the assessee wherever necessary for scrutiny. Therefore in this case, if the concerned Range officer/Assistant/Deputy Commissioner or concerned Additional Commissioner had checked the returns, the short payment would have been immediately detected as, as observed by the Commissioner in*

*para 4.5 of the impugned order, even the registration certificate of the appellant mentioned them as a unit of Accurate Transformers Ltd., and in all the documents of the appellant, the transfer of goods from the appellant to Accurate Transformer Ltd. had been reflected as inter unit transfer. Neither there is any allegation nor evidence to prove that there was some collusion between the appellant and the Jurisdictional Central Excise officers. The short payment was detected when during visit by the audit team, the records maintained by the appellant and made available by them to the audit officers were examined by them, - something which should have been done by the Jurisdictional Range Officers and Divisional Assistant Commissioner/Deputy Commissioner much earlier. The assessee cannot be penalized by invoking extended period under proviso to Section 11A(1) for demand of duty and penal provisions of Section 11AC for indolence on the part of the jurisdictional Central Excise officers. Moreover Apex Court in a series of judgments -*

*CCE v. Champher Drugs & Liniments reported in 1989 (40) [E.L.T.](#) 276 (S.C.);*

*Padmini Products v. Collector reported in 1989 (43) [E.L.T.](#) 195 (S.C.);*

*Pushpam Pharmaceuticals v. CCE reported in 1995 (78) [E.L.T.](#) 401 (S.C.);*

*Anand Nishikawa Co. Ltd. v. CCE, Meerut reported in 2005 (188) [E.L.T.](#) 149 (S.C.);*

*Continental Foundation Jt. Venture v. CCE, Chandigarh reported in 2007 (216) [E.L.T.](#) 177 (S.C.)*

*has held that something positive other than mere inaction or non-payment of duty is required for invoking extended period under proviso to Section 11A(1) and that suppression means failure to disclose full information with intent to evade the payment of duty and mere omission to give certain information is not suppression of fact unless it is deliberate with intention to evade the payment of duty. The above condition for invoking extended period prescribed in these judgments is not satisfied in this case.”*

15. Learned Counsel also submitted that when the extended period of limitation cannot be invoked in this case, the Tribunal is not required to go into the merits of the case as held by the Hon’ble High Court of Allahabad in the case of Monsanto Manufacturer Pvt.Ltd.-2014 (35) STR 177 (All) wherein the Hon’ble High Court has observed as under:

**“6.** The Tribunal held that the extended period of limitation could not be invoked by the Revenue since the condition precedent under Section 73(1) of the Finance Act had not been fulfilled. The relevant part of the reasoning of the Tribunal is as follows :-

**“13.** Coming to issue of limitation, we find that for the first time the Revenue wrote a letter dated 27-9-2002 asking assessee to pay tax for the

*period September 2001 to July, 2002. Assessee replied this letter vide their letter dated 8-11-2002. Thereafter there was correspondence on 20-11-2002 from the department and replied by assessee on 9-12-2002. We find that fact that assessee is not paying duty on cold storage was known to department in 2002. Quantum of cold storage charges is already part of agreement and is fixed on monthly basis. We are therefore of the view that extended period based on suppression of fact cannot be invoked in the present case and therefore demand beyond period of one year is time-barred in the present case. Decisions relied on by Id. D.R. do not support the case of the department as those decisions are in respect of clandestine removal of goods where one cannot ascertain the relevant dates defined under Section 11A of the Act."*

16. Despite that the merits of the case also seen by us, it is the case of the classification of goods sought on by the appellants. The classification cannot be decided by naked eye, therefore, the test report is relevant to decide the classification. The samples were drawn and tested at the time of investigation and report of CRCL is as under:

The sample is in the form of pale yellow flakes having following characteristics

|                               |                   |
|-------------------------------|-------------------|
| Free fatty acid as Oleic acid | -58.57% by weight |
| Acid Value 116.5%             | -116/52           |
| Saponification value          | -189.88           |
| Iodine value                  | -7.17             |
| Ash                           | -0-10%            |
| Titre                         | -60 deg C         |
| Test for Nickel in Ash        | -positive         |

On the basis of findings as above, it may be seen that the sample characteristics of hydrogenated material.

**Note :** However, other criterion i.e. nature and process of refining and actual usages may, therefore be ascertained before final assessment."

17. The said report is not conclusive to show that the goods in question are HRBO flakes or stearic acid. Further, the test reports of SASMIRA Institute have not given any finding only have given test report and composition thereof, therefore, it cannot be said that the samples drawn of HRBO flakes or stearic acid. Further, we find that the opinion was sought for the chemical composition of HRBO flakes. The CRCL provided opinion as under:

*The specification or physio-chemical data for Hydrogenated Rice Bran Oil Flakes (HRBO Flakes) were not available in the technical literature. However, the following were the related IS a specification:*

*Rice Bran Oil* *IS 3448-1968*

*(Reaffirmed in 1990)*

*Partially Hydrogenated* *IS 12361-1968*

*Rice Bran Fatty Acids*

*Rice Bran Fatty Acids* *IS 12068-1987*

*Stearic Acid Technical* *IS 1675-1971*

*Fatty Acids like stearic acid, Oleic Acid, etc. can be obtained by splitting but not by Hydrogenation of vegetable oils. The Hydrogenation of vegetable oils like rice Bran Oils does not converts into Hydrogenated fatty acid but in hydrogenated triglyceride of fatty acid (FAT). Hydrogenated il and fatty acid are two different products and different between them can be established by chemical testing.*

18. As the test report of CRCL states that the samples are having characteristics of Hydrogenated material and the stearic acid can be obtained by splitting but not by Hydrogenation, the samples drawn cannot be said of stearic acid. On the basis of the test report and opinion, it cannot be concluded

that the samples were drawn are of stearic acid. As these reports are not conclusive, the benefit of doubt goes in favour of the appellants.

19. Regarding reliance placed by the Revenue on the statements of the buyers of the goods, although the statements of 20 buyers have been recorded which comprises 7-8% of HRBO flakes but these witnesses could not be produced for cross examination except one who also appeared and stated that his statement has been taken under force. Therefore, the statements are not reliable statements in the absence of cross examination. There is gross violation of the principles of natural justice in the light of the decision of the Hon'ble High Court of Punjab and Haryana in the case of M/s.G-Tech Industries (supra) wherein the Hon'ble High Court has observed as under

*13. If none of the circumstances contemplated by clause (a) of [Section 9D](#) (1) exists, clause (b) of [Section 9D](#) (1) comes into operation. The said clause prescribes a specific procedure to be followed before the statement can be admitted in evidence. Under this procedure, two steps are required to be followed by the adjudicating authority, under clause (b) of [Section 9D](#) (1), viz.*

*i) the person who made the statement has to first be examined as a witness in the case before the adjudicating authority, and*

*ii) the adjudicating authority has, thereafter, to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.*

*14. There is no justification for jettisoning this procedure, statutorily prescribed by plenary parliamentary legislation for admitting, into evidence, a statement recorded before the gazetted Central Excise officer, which does not suffer from the handicaps contemplated by clause*

*(a) of [Section 9D\(1\)](#) of the Act. The use of the word "shall" in [Section 9D](#) (1), makes it clear that, the provisions contemplated in the sub-Section are 5 of 10 CWP No.12747 of 2016 mandatory. Indeed, as they pertain to conferment of admissibility to oral evidence they would, even otherwise, have to be recorded as mandatory.*

*15. The rationale behind the above precaution contained in clause*

(b) of [Section 9D\(1\)](#) is obvious. The statement, recorded during inquiry/investigation, by the gazetted Central Excise officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of [Section 9D\(1\)](#) mandates that the evidence of the witness has to be recorded before the adjudicating authority, as, in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned.

16. Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a gazetted Central Excise officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of [Section 9D\(1\)](#). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of [Section 9D\(1\)](#) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the gazetted Central Excise officer, unless and until he can legitimately invoke clause (a) of [Section 9D\(1\)](#). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of [Section 9D\(1\)](#).

6 of 10 CWP No.12747 of 2016 For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudicating proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.

17. In fact, [Section 138](#) of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to precede cross-examination, and cross-examination has to precede re-examination.

18. It is only, therefore,

(i) after the person whose statement has already been recorded before a gazetted Central Excise officer is examined as a witness before the adjudicating authority, and

(ii) the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence, that the question of offering the witness to the assessee, for cross-examination, can arise.

19. Clearly, if this procedure, which is statutorily prescribed by plenary Parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the CCE, on the said statements, has to be regarded as misguided, and the said statements have to be eschewed from consideration, as they would not be relevant for proving the truth of the contents thereof.

20. Reliance may also usefully be placed on para 16 of the judgment of the Allahabad High Court in C.C.E. V Parmarth Iron Pvt Ltd, 2010 (250) ELT 514 (All), which, too, unequivocally expound the law thus:

*"If the Revenue choose (sic chose?) not to examine any witnesses in adjudication, their statements cannot be considered 7 of 10 CWP No.12747 of 2016 as evidence."*

*21. That adjudicating authorities are bound by the general principles of evidence, stands affirmed in the judgement of the Supreme Court in C.C. V Bussa Overseas Properties Ltd, 2007(216) ELT 659 (SC), which upheld the decision of the Tribunal in Bussa Overseas Properties Ltd v C.C., 2001 (137) ELT 637 (T).*

*22. It is clear, from a reading of the Order-in-original dated 4.4.2016 supra, that Respondents No.2 has, in the said Orders-in-Original, placed extensive reliance on the statements, recorded during investigation under [Section 14](#) of the Act. He has not invoked clause (a) of sub-section (1) of [Section 9D](#) of the Act, by holding that attendance of the makers of the said statements could not be obtained for any of the reasons contemplated by the said clause. That being so, it was not open to Respondent No.2 to rely on the said statements, without following the mandatory procedure contemplated by clause (b) of the said sub-section. The Orders-in-Original, dated 4.4.2016, having been passed in blatant violation of the mandatory procedure prescribed by [Section 9D](#) of the Act, it has to be held that said Orders-in-Original stand vitiated thereby.*

*23. The said order-in-Original, dated 4.4.2016, passed by Respondent No.2 is, therefore, clearly liable to be set aside."*

Therefore, we hold that the statements of the buyers are not relevant in the facts and circumstances of the case.

20. Further, the Revenue has relied on the invoices issued by the suppliers, wherein the appellant has made certain manipulation. The Revenue did not make any effort to quantify the goods manufactured of the quantity of invoices which have been manipulated and no calculations have been made how out of these invoices the appellant manipulated the clearance of HRBO flakes and in the absence of any positive efforts have been made on the part of the Revenue, it cannot be alleged that the appellant has cleared stearic acid in the guise of HRBO flakes. It is also an admitted fact that the appellants are manufacturing both stearic acid and HRBO flakes.

21. As the Revenue has not shown any positive evidence to corroborate the statements of the buyers/suppliers to show that the appellants were clearing stearic acid in the guise of HRBO flakes. In that circumstance, the allegations made against the appellants are not sustainable. Therefore, on merits also, the appellants cannot be alleged that they have cleared stearic acid in the guise of HRBO flakes.

22. In the impugned order, the Commissioner himself has observed that "It is also a fact that the true nature of product manufactured by the noticee could not be seen by naked eye. There is no evidence to show that the department has made any conclusive effort for the same. I am, therefore, of the opinion that manufacturer has also not made true and full declaration of the product being manufactured by them." Although the adjudicating himself has admitted that there is no evidence to show that department has made any conclusive effort for the same. The adjudicating authority was of the opinion that manufacturer has also not made true and full declaration of the product being manufactured by them. These observations of the adjudicating authority misplaced, as the appellants had filed classification declarations within time and also filed ER-1 returns regularly by classifying HRBO under chapter heading 15.04 and stearic acid under heading 38.23 separately. Further, the samples were drawn no test reports were furnished to the appellants or before us by the Revenue, in that circumstance, we hold that the whole case of the Revenue is made on the basis of presumption which is not



sustainable in the eyes of law. Accordingly, we set aside the impugned order and allow the appeals with consequential relief, if any.

*(Order dictated and pronounced in the court)*

**Anil G. Shakkarwar**  
**Member (Technical)**

**Ashok Jindal**  
**Member (Judicial)**

KL