CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I

Appeal(s) Involved:

E/2301/2011-DB, E/2349/2011-DB, E/2350/2011-DB, E/2351/2011-DB, E/1099/2010-DB, E/1446/2010-DB, E/1618/2010-DB, E/1932/2010-DB

(Arising out of Order-in-Original No. 23 & 24-2009 dated 29/10/2009 passed by Commissioner of Customs, Central Excise & Service Tax Tirupathi)

SHREE RADHA KRISHNA ALLOYS PVT LTD	Appellant(s)
Shree Radha Krishna Alloys Pvt Ltd	Appellant(s)
SANAY AGARWAL, MANAGING DIRECTOR OF M/S. SHREE RADHA KRISHNA ALLOYS PVT LTD	Appellant(s)
SOHAIB, ACCOUNTANT, M/S. SHREE RADHA KRISHNA ALLOYS PVT LTD	Appellant(s)
Indus Steels & Alloys Ltd	Appellant(s)
KALI METALS PVT LTD	Appellant(s)
CHAMUNDI STEEL CASTINGS (I) LTD	Appellant(s)
VRKP STEEL INDUSTRIES PVT LTD	Appellant(s)

Versus

Commissioner of Central Excise,Customs & Service Tax TIRUPATI	Respondent(s)

Appearance:

Mr R. Murlidhar, Mr S. Venkatachalam and Ms Aparajitha Advocates for the Appellant.

Mr Arun Kumar, A.R. for the Respondent.

CORAM:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 20/02/2019
Date of Decision: 20/02/2019

Final Order No. A/ 30241-30248 / 2019

[Order per: M.V.Ravindran.] .

All these appeals are arising out of order-in-original No. 23 & 24-2009 dated 29/10/2009. Since the issue is interconnected in all these appeals, they are being disposed of by a common order.

2. Advocate Shri Murlidhar appeared for Shri Radha Krishna Alloys Pvt Ltd., Sanjay Agarwal, Managing Director of Shri Radha Krishna Alloys Pvt Ltd and Sohaib Accountant, Shri Radha Krishna Alloys Pvt Ltd, Mr. S. Venkatachalam appeared for Indus Steels & Alloys Ltd and Ms Aparajitha appeared for Chamundi Steel Castings (I) Ltd. Shri Murlidhar also appeared for Kali Metals Pvt Ltd and none appeared for VRKP Steel Industries Pvt Ltd. After hearing both sides for some time on the matter, we find that learned counsel Mr Murlidhar and Shri Venkatachalam both have stated that they sought cross-examination of various persons whose statements have been relied upon by the adjudicating authority to hold that there was clandestine manufacture and clearance of goods in addition to various other corroborative evidences. It is the submission of the advocate that provisions of Section 9D of the Central Excise Act 1944 has been interpreted by the Hon'ble High Court of Punjab and Haryana in the case of G-Tech Industries Vs UOI [2016 (339) ELT 209 (P&H] and Jindal Drugs Pvt Ltd Vs UOI [2016 (340)ELT 67 (P&H)] and Ambika International Vs UOI [2018 (361)ELT(90) P&H)] to state that even in the adjudication proceedings, the adjudicating

authority has to examine and permit cross-examination of various persons on whose statements reliance is placed upon.

3. Learned counsel Shri Venkatachalam and Miss Aparajitha submit that their clients have not received some of the documents on which reliance is placed upon. Hence they pray for such documents be given to them to defend their case effectively.

4. After considering the submissions made by both sides, we find that the appellants herein were seeking cross-examination of various persons whose statements were relied upon. Advocate Shri Murlidhar's client was seeking cross-examination of Panch witnesses to Mahazar which has been declined by the adjudicating authority giving very flimsy reason. In our considered view, after perusing the judgements of Punjab and Haryana High Court in the case of G-Tech Industries, Jindal Drugs Pvt Ltd and Ambika International (supra), it becomes imperative on the part of the adjudicating authority to follow the provisions of Section 9D of Central Excise Act 1944 before proceeding ahead and deciding the matter in adjudication. Accordinlgy, all these matters needs to be reconsidered by the adjudicating authority by following the provisions of Section 9D of the Central Excise Act 1944 as has been explained by their Lordships in the cases cited above. We find that learned counsels Shri Venkatachalam and Miss Aparajitha are not able to provide us list of documents, which they have not received from the department which are as an Annexure to show-cause notice. In any case, we direct them to give list of documents which are not available with them to the adjudicating authority who will provide the same to them for defending the case. In view of the facts and circumstances of this case and also the interpretation of provisions of Section 9D of the Central Excise Act 1944, by the Hon'ble High Court of Punjab and Haryana, we set aside the

impugned order and remit the matters back to the adjudicating authority to reconsider the issue afresh after following the provisions of Section 9D and subsequently granting a personal hearing to the appellant before coming to a conclusion in this matter.

5. All these appeals are disposed of by way of remand to the adjudicating authority.

(Order pronounced and dictated in open court)

P. Venkata Subba Rao
MEMBER (TECHNICAL)

M.V.Ravindran
MEMBER (JUDICIAL)

Neela Reddy