CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

DIVISION BENCH – COURT NO. 1

Excise Appeal No 731 of 2008
(Arising out of Order-in-Original No. 4/2008- (CE)-Commr, dated 25.06.2008 passed by Commissioner, Hyderabad)

Handum Industries Ltd., .. **APPELLANT**
Survey No.296/7/7,8 and 11,
IDA Bollaram, Medak District,
Telangana – 502 325.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Central Excise & Service Tax,
Medchal – GST.
Medchal Commissionerate, H.NO.11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI, Bazaarghat Branch, Lakdikapul,
Hyderabad, Telangana – 500 004.

WITH

Excise Appeal No 732 of 2008
(Arising out of Order-in-Original No. 4/2008- (CE)-Commr, dated 25.06.2008 passed by Commissioner, Hyderabad)

P.V. Ramana Reddy, .. **APPELLANT**
Managing Director,
Handum Industries Ltd.,
Survey No.296/7/7,8 and 11,
IDA Bollaram, Medak District,
Telangana – 502 325.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Central Excise & Service Tax,
Medchal – GST.
Medchal Commissionerate, H.NO.11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI, Bazaarghat Branch, Lakdikapul,
Hyderabad, Telangana – 500 004.

WITH

Excise Appeal No 733 of 2008
(Arising out of Order-in-Original No. 4/2008- (CE)-Commr, dated 25.06.2008 passed by Commissioner, Hyderabad)

M.V.R. Ganesh, .. **APPELLANT**
Assistant Supervisor(Production,
Handum Industries Ltd.,
Survey No.296/7/7,8 and 11,
IDA Bollaram, Medak District,
Telangana – 502 325.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Central Excise & Service Tax,
Medchal – GST.
Medchal Commissionerate, H.NO.11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI, Bazaarghat Branch, Lakdikapul,
Hyderabad, Telangana – 500 004.

WITH

Excise Appeal No 734 of 2008
(Arising out of Order-in-Original No. 4/2008- (CE)-Commr, dated 25.06.2008 passed by Commissioner, Hyderabad)

Y. Ravi Sekhar, .. **APPELLANT**
Technical Advisor,
Handum Industries Ltd.,
Survey No.296/7/7,8 and 11,
IDA Bollaram, Medak District,
Telangana – 502 325.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Central Excise & Service Tax,
Medchal – GST.
Medchal Commissionerate, H.NO.11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI, Bazaarghat Branch, Lakdikapul,
Hyderabad, Telangana – 500 004.

WITH

Excise Appeal No 735 of 2008
(Arising out of Order-in-Original No. 4/2008- (CE)-Commr, dated 25.06.2008 passed by Commissioner, Hyderabad)

M. Suryanarayana, .. **APPELLANT**
Officer-in-Charge (Central Excise),
Handum Industries Ltd.,
Survey No.296/7/7,8 and 11,
IDA Bollaram, Medak District,
Telangana – 502 325.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Central Excise & Service Tax,
Medchal – GST.
Medchal Commissionerate, H.NO.11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI, Bazaarghat Branch, Lakdikapul,
Hyderabad, Telangana – 500 004.

AND

Excise Appeal No 736 of 2008
(Arising out of Order-in-Original No. 4/2008- (CE)-Commr, dated 25.06.2008 passed by Commissioner, Hyderabad)

Ch. Jawahar Babu, .. **APPELLANT**
Chief Executive Officer,
M/s Sujana Group Industries,
18, Nagarjuna Hills, Punjagutta
Hyderabad-500 082.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Central Excise & Service Tax,
Medchal – GST.
Medchal Commissionerate, H.NO.11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI, Bazaarghat Branch, Lakdikapul,
Hyderabad, Telangana – 500 004.

Appearance
Shri B. Venugopal, Advocate for the Assessee.

Shri AVLN Chary, Superintendent for the Respondent.

Coram: **Hon'ble Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30529-30534/2019

Date of Hearing:12.04.2019
Date of Decision:12.04.2019

[ORDER PER: MR. P.V. SUBBA RAO]

1. All these appeals arise within the same Order-in-Original and hence are being disposed of together. The main appeal is Appeal No. E/731/2008 filed by appellant firm against confirmation of demand along with interest and imposition of penalties under Section 11AC of Central Excise Act, 1944 and under Rule 25 of Central Excise Rules, 2002. The remaining appeals are filed by various persons on whom personal penalty was imposed under Rule 26 of Central Excise Rules, 2002.

2. After hearing both sides, it emerges that based on the information and records received from DRI the jurisdictional Central Excise Commissionerate investigated the matter and came to a conclusion that the appellant had

resorted to diversion of duty free materials imported by them claiming the benefit of Notification No. 53/97-CUS dated 03.06.1997. After recording the statements of various persons during investigation a show cause notice dated 08.01.2008 was issued proposing recovery of duty under Section 11A(1) of Central Excise Act, 1944 amounting to Rs.4,83,83,890/- along with interest under Section 11AB. It was also proposed to impose a penalty of equal amount under Section 11AC and impose penalty under Rule 25 of Central Excise Rules, 2002. It was also proposed to impose penalties on various individual executives for the alleged violation. After following due process the lower adjudicating authority vide the impugned order demanded the duty along with interest and imposed penalties as proposed.

3. At the outset, Learned Counsel for the appellants submits that in this case the show cause notice was issued relying upon various statements of individuals. These statements were also relied upon by the adjudicating authority when he confirmed demands and imposed penalties. He would submit that the procedure prescribed under Section 9D(1) of Central Excise Act, 1944 has to be scrupulously followed where any statement recorded by an officer has to be relied upon which was not done in this case. He would submit that Hon'ble High Court of Punjab & Haryana in the case of Jindal Drugs Private Ltd., [2016 (340) ELT 67 (P&H)] held that Section 9D has to be followed if any statement recorded by the Central Excise Officers has to be relied upon.

4. Learned DR, on the other hand submits that the appellant had sought cross examinations of various persons some of which were allowed while in other cases the persons who gave the statements were employees of the appellant themselves and were not produced by the appellant during adjudicating proceedings. Therefore, there is no force in the arguments of the Learned Counsel for the appellant.

5. We have considered the arguments on both sides and after perusing the records find that Section 9D has to be scrupulously followed whenever a statement recorded by an officer of Central Excise is to be relied upon in any adjudication proceedings as has been held by the Hon'ble High Court of Punjab & Haryana in the case of Jindal Drugs Private Ltd., (supra) which has not been done in this case. To be fair, the judgment of the Hon'ble High Court of Punjab & Haryana was not before the adjudicating authority and at that time Section 9D was not been followed although it was in the statute book. Neverthless,

Section 9D has to be followed and since it was not done in this case, we find that this is a fit case to be remanded to the original authority for re-adjudication after following Section 9D and giving the appellant an opportunity of being heard again.

6. All appeals are allowed by way of remand to the adjudicating authority with a direction to follow the procedure under Section 9D in respect of every statement he wished to rely upon.

(Operative part of this order was pronounced
in court on conclusion of the hearing)

ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
(MEMBER (TECHNICAL)

Jaya