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

DIVISION BENCH – COURT NO. 1

Excise APPEAL No.111/2009

(Arising out of **Orders-in-Original** No. C.Ex.No. 07/2008, dated 30.09.2008 passed by Commissioner of Customs & Central Excise, Hyderabad-IV Commissionerate, Hyderabad)

M/s Neptune Synthetics, .. **APPELLANT**
5-9-287/Plot No. 49,
Rajivgandhi Nagar,
Kukatpally Industrial Area,
HYDERABAD – 500 072.

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV .. **RESPONDENT**
Posenett Bhavan,
Tilak Road, Ramkoti,
HYDERABAD – 500 001.
Telangana

WITH

Excise APPEAL No.112/2009

(Arising out of **Orders-in-Original** No. C.Ex.No. 07/2008, dated 30.09.2008 passed by Commissioner of Customs & Central Excise, Hyderabad-IV Commissionerate, Hyderabad)

Smt. Rajeshwari Agarwal, Proprietor, .. **APPELLANT**
5-9-287/Plot No. 49,
Rajivgandhi Nagar,
Kukatpally Industrial Area,
HYDERABAD – 500 072.

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV .. **RESPONDENT**
Posenett Bhavan,
Tilak Road, Ramkoti,
HYDERABAD – 500 001.
Telangana

AND

Excise APPEAL No.113/2009

(Arising out of **Orders-in-Original** No. C.Ex.No. 07/2008, dated 30.09.2008 passed by Commissioner of Customs & Central Excise, Hyderabad-IV Commissionerate, Hyderabad)

Shri Sunil Kumar Agarwal, GPA Holder .. **APPELLANT**
5-9-287/Plot No. 49,
Rajivgandhi Nagar,
Kukatpally Industrial Area,
HYDERABAD – 500 072.

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV .. **RESPONDENT**
Posenett Bhavan,
Tilak Road, Ramkoti,
HYDERABAD – 500 001.
Telangana

Appearance
Shri B. Venugopal & Sh. T. Venugopal Swamy, Advocates for the appellant(s).
Shri V.R. Pawan Kumar, Superintendent/AR for the Respondent.

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

FINAL ORDER No. A/30634 – 30636/2019

Date of Hearing: 10.07.2019
Date of Decision: 10.07.2019

[ORDER PER: Mr. P. Venkata Subba Rao)

1. These three appeals are on the same issue and hence are being disposed of together.

2. The facts of the case in brief are that M/s Neptune Synthetics Limited is engaged in manufacture of HDPE/PP Woven Sacks under Chapter 39 of the Central Excise Tariff. They had exported some of their products and claimed rebate under Rule 18 of Central Excise Rules, 2002 which was sanctioned to them. Thereafter the matter was investigated and they were issued a show cause notice No. O.R. 74/2006-Adjn. (Commr.), dated 22.09.2006, seeking to recover the erroneously sanctioned rebate, on the following grounds:

(a) Certificate of ARE-1 was done by a Customs Officer who was not the proper officer at Kakinada Port .

(b) Disclaimer Certificates issued by the Exporters were not genuine/forged .

(c) The vehicles mentioned in the Central Excise invoices for the clearance of the packing materials were not transport vehicles.

(d) Double invoices.

(e) Receipt of material was denied by the consignee.

(f) The price at which the packing material sold by the appellant is inclusive of Central excise duty.

(g) Packing materials not matching with the description available on the shipping bills, and

(h) Non-observance of procedure as laid down under Rule 18 of the Central Excise Rules, 2001/2002.

3. The Order-in-Original dt. 30.09.2008 confirmed the demand under section 11A (1) of Central Excise Act along with interest and imposed a penalty under section 11 AC upon M/s Neptune Synthetics. Personal penalties of Rs.25,00,000/- each were also imposed on Shri Sunil Kumar Agarwal and Smt. Rajeswari Agarwal. The present appeals are against these orders of the original authority.

4. At the outset, Ld. Counsel for the appellant submits that the demand was raised based on the investigations conducted by the department which led to the conclusion that the documents were forged/incorrect and therefore the rebate was wrongly sanctioned to them. The investigation also included recording statements of various persons. These statements were relied upon in the adjudication proceedings without following the procedure prescribed under Section 9D of Central Excise Act, 1944. He submits that Hon'ble High Court of Punjab & Haryana in the case of Jindal Drugs Pvt. Ltd. vs. Union of India [2016(340)ELT 67 (P&H)] and G-Tech Industries vs. Union of India [2016(339)ELT 209 (P&H)] has held that the statements recorded by the Central Excise Officers are admissible in a Court of Law or any adjudication proceedings only if the procedure prescribed under section 9D has been followed. Ld. DR agrees that this procedure was not followed in the present adjudication proceedings.

5. Ld. Counsel also submits that as the allegation was that the rebate was claimed on the basis of fake/forged documents, the matter was also investigated by Central Bureau of Investigation and both the appellants and the Officers of Central Excise were prosecuted by the CBI. The Hon'ble Special Court of CBI has acquitted both the appellants and the Officers. Therefore, the evidentiary value of the documents and statements relied upon in the present adjudication proceedings also need to be seen in the light of this acquittal to assess if they can be relied upon to confirm the demand. He fairly submits that the adjudicating authority did not have the opportunity of considering the fact that CBI Court had acquitted them. He also agrees that during the relevant period, it was not the common practice by the adjudicating officers to follow Section 9D although it was a mandatory provision. In view of the above, he submits that the appeals may be remanded to the original authority for re-adjudication, following the provisions of Section 9D with respect to the statements relied upon and also considering the other evidence which they may produce in their defence.

6. Ld. DR has no objection to the matter being remanded to the original authority in view of the mandatory requirement of following the procedure under section 9D as held by Hon'ble High Court of Punjab & Haryana.

7. We have considered the arguments on both sides and find that this is a fit case to be remanded to the original authority to enable them to follow the procedure under section 9D with respect to the statements and also consider any other additional evidence that may be produced by the appellants. Therefore, without passing any remarks on the merits of the case and leaving all issues open, we remand the matter to the original authority for adjudication after following the procedure prescribed under section 9D and following the principles of natural justice.

8. The appeals are allowed by way of remand to the original authority.

(Operative portion of the order pronounced in open court on conclusion of hearing)

**(S.S. GARG)
MEMBER (JUDICIAL)**

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

vrg