

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

EXCISE APPEAL NO. 51451 OF 2022

(Arising out of Order-in-Appeal No. 06-07 (SM) CE/JPR/2022 dated 03.02.2022 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

M/s. Sagar Freshners Pvt. Ltd.

.....Appellant

Plot No. A-14,
RIICO Industrial Area,
22 Godam, Jaipur (Rajasthan)

VERSUS

The Principal Commissioner

.....Respondent

Central Excise & CGST

Commissionerate,
NCR Building, Statue Circle,
C-Scheme, Jaipur – 302 005

WITH

EXCISE APPEAL NO. 51461 OF 2022

(Arising out of Order-in-Appeal No. 06-07 (SM) CE/JPR/2022 dated 03.02.2022 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

Raj Kumar Agarwal, Director

.....Appellant

M/s. Sagar Freshners Pvt. Ltd.
Plot No. A-14,
RIICO Industrial Area,
22 Godam, Jaipur (Rajasthan)

VERSUS

The Principal Commissioner

.....Respondent

Central Excise & CGST

Commissionerate,
NCR Building, Statue Circle,
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APPEARANCE:

Shri Arun Goyal, Advocate for the Appellant

Shri Bhagwat Dayal, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 03.07.2025

DATE OF DECISION: 05.12.2025

FINAL ORDER NO's. 51819-51820/2025

JUSTICE DILIP GUPTA:

Excise Appeal No. 51451 of 2022 has been filed by Sagar Freshners Pvt. Ltd.¹ for quashing that part of the order dated 03.02.2022 passed by the Commissioner (Appeals), Central Excise and CGST, Jaipur², that rejects the appeal filed by the appellant against the order dated 23.12.2020 passed by the Additional Commissioner, Central Goods and Service Tax, Commissionerate, Jaipur³ confirming the demand of excise duty and its recovery from the appellant under section 11A with interest under section 11AA and penalty under section 11AC of the of the Central Excise Act, 1944⁴.

2. **Excise Appeal No. 51461 of 2022** has been filed by Raj Kumar Agarwal, Director of the appellant, to assail that part of the order dated 03.02.2022 passed by the Commissioner (Appeals), that rejects the appeal filed by him against the order dated 23.12.2020 passed by the Additional Commissioner imposing penalty upon the appellant under rule 26(1) of the Central Excise Rules, 2002 read with section 174 of the CGST Act, 2017.

3. The appellant is engaged in the manufacture of Scented Supari. The issue in these appeals relates to clandestine clearances of goods for the period from July, 2014 to June, 2017. The quantum of clandestine clearances has been ascertained on the basis of maximum running speed of packing machines used for packing of the final product manufactured by the appellant i.e. scented supari. By adopting this methodology, the production and clearances has been increased by five times of what was reflected in returns and duty discharged.

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1. **the appellant**
 2. **the Commissioner (Appeals)**
 3. **the Additional Commissioner**
 4. **the Central Excise Act**

4. A show cause notice dated 07.10.2019 was issued to the appellant alleging that the appellant had not disclosed the true and correct details of production of finished goods and subsequent clearances made in the returns filed for the period from July, 2014 to June, 2017. The show cause notice also alleged that the appellant had deliberately indulged in clandestine manufacture of excisable goods from unaccounted raw material and cleared the finished product without cover of tax invoice. Further, the appellant had deliberately availed irregular Small Scale Industries exemption, although the appellant had crossed the threshold limit of turnover of Rs. 400 lakhs during the financial year. The show cause notice also invoked the extended period of limitation under section 11A(4) of the Central Excise Act alleging that there was suppression of production and clearance of finished goods with intention to evade payment of duty.

5. The Additional Commissioner confirmed the demand by order dated 23.12.2020 against which two appeals were filed by the appellant and Raj Kumar Agarwal before the Commissioner (Appeals). These appeals have been rejected by a common order dated 03.02.2022. The relevant portions of the order passed by the Commissioner (Appeals) are reproduced below:

"6. I have gone through the facts of the case and submissions made by the appellant in their appeal memo, at the time of personal hearing and also in additional submissions. I observe that during search of the factory premises of the appellant a case of excess stock of scented supari was booked and the excess goods were seized. Further, during search of residence of the director of the appellant company loose papers indicated clearance of goods, which were not accounted for in the records. Also, speed of the pouch packing machines, installed in the factory of the appellant were verified and it was noticed that the appellant had suppressed actual production and it was alleged that the appellant had clandestinely removed the same

without payment of Central Excise duty. **The adjudicating authority has confirmed the demand and imposed equal penalty upon the appellant and penalty of Rs. 5,00,000/- upon the Director. The appellants have contested mainly on the manner of stock verification and raising demand on the basis of speed of the machines without any corroborative evidence and also challenge the inference drawn from resumed loose papers. I, therefore, find that the issue to be decided in the appeal is whether the demand is sustainable or not.**

7.1 I observe that the appellant has put forth various arguments to challenge the method of computation of demand and to prove that the whole demand and allegation of clandestine removal of excisable goods is based on assumption. **I find that the factors considered by the Revenue for computing quantum of evasion of duty are based on the statements of the director of the appellant company Shri Rajkumar Agarwal,** wherein he categorically admitted the anomaly. I observe that the appellant has argued that the director had retracted his statement dated 27.12.2017, but I find that the appellant has not produced any evidence of duress or coercion at the time of recording of the statement. Further, retraction is also not immediate. I am of the considered view that in absence of proof of duress, statement recorded under Section 14 of the Central Excise Act, 1944 is reliable as evidence. *****

7.3 I further find that in his statement dated **04.01.2018,** recorded before the Joint Director, DGGI under Section 14 of the Act. **Shri Rajkumar Agarwal, Director again agreed with the contents of the Panchnama dated 22.12.2017 and admitted the anomaly of clandestine manufacture and removal of goods without payment of duty.** Statements of Shri Rajkumar were also recorded on 23.05.2018 and 26.08.2019, wherein he admitted the installation of 16 automatic and one manual pouch

packing machine, about the timings of shift, process of manufacture and cash seized from his residence on 22.12.2017, but there is no denial of any of his earlier statements.

7.4 I find that the statement of the Supervisor of the appellant firm also confirms the facts of installation of 16+1 pouch packing machines, number of labourers working, shift timing etc. Further, the statement of the Authorised Signatory and also Director of the supplier firm of packing material, corroborate the clandestine procurement of packing material by the appellant firm. As the appellant in his statement recorded under Section 14 of the Act, has categorically admitted procurement of raw material and packing material in cash, without invoices and clandestine removal of the finished goods, hence, for the mere reasons put forth by the appellant, the evidentiary value of the documents does not reduce. The analogy also applies on the argument of the appellant regarding cross objection of various persons. **In the light of the confessional statement and statements of the other persons, for the mere reasons put forth by the appellant, cross examination of the panchwitnesses, officers of the Deptt and other persons would not reduce the weight of evidentiary value of the facts and documents available on records.** Thus, I find that there was no violation of natural justice in denial of the cross examination by the adjudicating authority.”

(emphasis supplied)

6. A perusal of the aforesaid order would show that it is based on statements made under section 14 of the Central Excise Act. It would, therefore, have to be seen whether the statements made under section 14 of the Central Excise Act can be considered as relevant if the procedure contemplated under section 9D of the Central Excise Act has not been followed.

6. Section 14 of the Central Excise Act deals with power to summon persons to give evidence and produce documents. It provides that any Central Excise Officer empowered by the Central Government shall have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry, which such officer is making under the Central Excise Act.

7. Section 9D of the Central Excise Act deals with relevancy of statements under certain circumstances and it is reproduced below:

"9D. Relevancy of statements under certain circumstances.

(1) A statement made and signed by a person before any Central Excise Officer of gazette rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

8. It would be seen that section 14 of the Central Excise Act enables the concerned Officer to summon any person whose attendance he considers necessary to give evidence in any inquiry which such Officer is making. The statements of persons so summoned are then recorded under these provisions. It is these statements which are referred to in section 9D of the Central Excise Act. A bare perusal of sub-section (1) of section 9D makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act, the provisions of sub-section (1) of section 9D shall apply to any proceedings under the Central Excise Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether, having regard to the circumstances of the case, the statement should be admitted in evidence, in the interest of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the

statements of persons making them would be of relevance for the purpose of proving the facts which they contain.

9. Section 9D of the Central Excise Act is almost identical to section 138B of the Customs Act.

10. It would now be appropriate to examine decisions interpreting section 9D of the Central Excise Act and section 138B of the Customs Act, 1962⁵.

11. In **Ambika International vs. Union of India**⁶ decided on 17.06.2016, the Punjab and Haryana High Court examined the provisions of section 9D of the Central Excise Act. The show cause notices that had been issued primarily relied upon statements made under section 14 of the Central Excise Act. It was sought to be contended by the Writ Petitioners that the demand had been confirmed in flagrant violation of the mandatory provisions of section 9D of the Central Excise Act. The High Court held that if none of the circumstances contemplated by clause (a) of section 9D(1) exist, then clause (b) of section 9D(1) comes into operation and this provides for two steps to be followed. The first is that the person who made the statement has to be examined as a witness before the adjudicating authority. In the second stage, the adjudicating authority has to form an opinion, having regard to the circumstances of the case, whether the statement should be admitted in evidence in the interests of justice. The judgment further holds that in adjudication proceedings, the stage of relevance of a statement recorded before Officers would arise only after the statement is admitted in evidence by the adjudicating authority in accordance with the procedure contemplated in section 9D(1)(b) of the Central Excise Act. The judgment also highlights the reason why such an elaborative procedure has been provided in section 9D(1) of the Central

5. **the Customs Act**

6. **2018 (361) E.L.T. 90 (P&H)**

Excise Act. It notes that a statement recorded during inquiry/investigation by an Officer of the department has a possibility of having been recorded under coercion or compulsion and it is in order to neutralize this possibility that the statement of the witness has to be recorded before the adjudicating authority. The relevant portions of the judgment are reproduced below:

"16. Section 9D of the Act came in from detailed consideration and examination, by the Delhi High Court, in J.K. Cigarettes Ltd. v. CCE, 2009 (242) E.L.T. 189 (Del.). Para 12 of the said decision clearly holds that by virtue of sub-section (2) of Section 9D, the provisions of sub-section (1) thereof would extend to adjudication proceedings as well.

22. 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.

23. 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 mandatory. Indeed, as they pertain to conferment of admissibility to oral evidence they would, even otherwise, have to be recorded as mandatory.

24. 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 adjudication authority, as, in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned.**

25. 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). For this, he has to summon the person who had made the statement, examine him as witness before

him in the adjudication 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.

26. 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.

27. 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.

28. 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."

(emphasis supplied)

12. The Punjab and Haryana High Court in **Jindal Drugs Pvt. Ltd. vs. Union Of India**⁷ that was decided on 21.06.2016 also held that unless and until one of the circumstances contemplated by clause (a) of section 138B(1)

7. 2016 (340) E.L.T. 67 (P & H)

of the Customs Act applies, the adjudicating authority is bound to strictly follow the procedure contained in clause (b) of section 138B(1) of the Customs Act, before treating a statement recorded under section 108 of the Customs Act as relevant.

13. In **Hi Tech Abrasives Ltd. vs. Commissioner of C. Ex. & Cus., Raipur**⁸ decided on 04.07.2018, the Chhattisgarh High Court also examined the provisions of section 9D of the Central Excise Act. The allegation against the appellant was regarding clandestine removal of goods without payment of duty and for this purpose reliance was placed on the statement of the Director of the Company who is said to have admitted clandestine removal of goods. The contention of the appellant before the High Court was that the statement of the Director could be admitted in evidence only in accordance with the provisions of section 9D of the Central Excise Act. After examining the provisions of sub-sections (1) and (2) of section 9D of the Central Excise Act, and after placing reliance on the judgment of the Punjab and Haryana High Court in **Ambika International**, the Chhattisgarh High Court held:

"9.3 A conjoint reading of the provisions therefore reveals that a statement made and signed by a person before the Investigation Officer during the course of any inquiry or proceedings under the Act shall be relevant for the purposes of proving the truth of the facts which it contains in case other than those covered in clause (a), only when the person who made the statement is examined as witness in the case before the court (in the present case, Adjudicating Authority) and the court (Adjudicating Authority) forms an opinion that having regard to the circumstances of the case, the statement should be admitted in the evidence, in the interest of justice.

8. 2018 (362) E.L.T. 961 (Chhattisgarh)

9.4 The legislative scheme, therefore, is to ensure that the statement of any person which has been recorded during search and seizure operations would become relevant only when such person is examined by the adjudicating authority followed by the opinion of the adjudicating authority then the statement should be admitted. The said provision in the statute book seems to have been made to serve the statutory purpose of ensuring that the assessee are not subjected to demand, penalty interest on the basis of certain admissions recorded during investigation which may have been obtained under the police power of the Investigating authorities by coercion or undue influence.

9.5 *** The provisions contained in Section 9D, therefore, has to be construed strictly and held as mandatory and not mere directory.** Therefore, unless the substantive provisions contained in Section 9D are complied with, the statement recorded during search and seizure operation by the Investigation Officers cannot be treated to be relevant piece of evidence on which a finding could be based by the adjudicating authority. A rational, logical and fair interpretation of procedure clearly spells out that before the statement is treated relevant and admissible under the law, the person is not only required to be present in the proceedings before the adjudicating authority but the adjudicating authority is obliged under the law to examine him and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. **Therefore, we would say that even mere recording of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice. The rigor of this provision, therefore, could not be done away with by the adjudicating authority, if at all, it was inclined to take into consideration the statement recorded earlier during investigation by the Investigation officers.** Indeed,

without examination of the person as required under Section 9D and opinion formed as mandated under the law, the statement recorded by the Investigation Officer would not constitute the relevant and admissible evidence/material at all and has to be ignored. **We have no hesitation to hold that the adjudicating officer as well as Customs, Excise and Service Tax Appellate Tribunal committed illegality in placing reliance upon the statement of Director Narayan Prasad Tekriwal which was recorded during investigation when his examination before the adjudicating authority in the proceedings instituted upon show cause notice was not recorded nor formation of an opinion that it requires to be admitted in the interest of justice.** In taking this view, we find support from the decision in the case of Ambica International v. UOI rendered by the High Court of Punjab and Haryana.”

(emphasis supplied)

14. In **Additional Director General (Adjudication) vs. Its My Name Pvt. Ltd.**⁹ decided on 01.06.2020, the Delhi High Court examined the provisions of sections 108 and 138B of the Customs Act. The department placed reliance upon the statements recorded under section 108 of the Customs Act. The Delhi High Court held that the procedure contemplated under section 138B(1)(b) has to be followed before the statements recorded under section 108 of the Customs Act can be considered as relevant. The relevant paragraphs of the judgment of the Delhi High Court are reproduced below:

“76. We are not persuaded to change our view, on the basis of the various statements, recorded under Section 108 of the Act, on which the Learned ASG sought to rely. Statements, under Section 108 of the Act, we may note, though admissible in evidence, acquire relevance only

9. 2021 (375) E.L.T. 545 (Del.)

when they are, in fact, admitted in evidence, by the adjudicating authority and, if the affected assessee so chooses, tested by cross-examination. We may, in this context, reproduce, for ready reference, Section 138B of the Act, thus:*****

A Division Bench of this Court has, speaking through A.K. Sikri, J. (as he then was) held, in J & K Cigarettes Ltd. v. Collector of Central Excise [2009 (242) E.L.T. 189 (Del.)] that, by virtue of sub-section (2), Section 138B(1) of the Act would apply, with as much force, to adjudication proceedings, as to criminal proceedings.

We express our respectful concurrence with the above elucidation of the law which, in our view, directly flows from Section 138B(1) of the Act - or, for that matter, Section 9D of the Central Excise Act, 1944.

77. The framers of the law having, thus, subjected statements, recorded under Section 108 of the Act, to such a searching and detailed procedure, before they are treated as relevant in adjudication proceedings, we are of the firm view that such statements, which are yet to suffer such processual filtering, cannot be used, straightaway, to oppose a request for provisional release of seized goods. **The reliance, in the appeal before us, on various statements recorded during the course of investigation in the present case cannot, therefore, in our view, invalidate the decision, of the Learned Tribunal, to allow provisional release of the seized 25400.06 grams of gold jewellery, covered by Bill of Entry No. 107190, dated 20th April, 2019."**

(emphasis supplied)

15. In **M/s. Drolia Electrosteel P. Ltd. vs. Commissioner, Customs, Central Excise & Service Tax, Raipur¹⁰** decided on 30.10.2023, a Division

10. **Excise Appeal No. 52612 of 2018 decided on 30.10.2023**

Bench of the Tribunal examined the provisions of section 9D of the Central Excise Act and after placing reliance upon the decision of the Punjab and Haryana High Court in **Jindal Drugs**, observed that if the mandatory provisions of section 9D(1)(b) of the Central Excise Act are not followed, the statements cannot be used as evidence in proceedings under Central Excise Act. The relevant portions of the decision of the Tribunal are reproduced below:

"14.Evidently, the statements will be relevant under certain circumstances and these are given in clauses (a) and (b) of subsection (1). There is no assertion by either side that the circumstances indicated in (a) existed in the case. **It leaves us with (b) which requires the court or the adjudicating authority to first examine the person who made the statement and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence. Of course, the party adversely affected by the statement will have to be given an opportunity to cross examine the person who made the statement but that comes only after the statement is, in the first place, after examination by the adjudicating authority, admitted in evidence.** This has not been done in respect of any of the 35 statements. Therefore, all the statements are not relevant to the proceedings.

15. It has been held in a catena of judgments including Jindal Drugs Pvt. Ltd. versus Union Of India [2016 (340) E.L.T. 67 (P&H)] that section 9D is a mandatory provision and if the procedure prescribed therein is not followed, statements cannot be used as evidence in the proceedings under Central Excise Act. *****

16. Therefore, the 35 statements relied upon in the SCN are not relevant and hence also not admissible."

(emphasis supplied)

16. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act and under section 108 of the Customs Act during the course of an inquiry under the two Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14 of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence.

17. A Division Bench of the Tribunal in **M/s Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur**¹¹ followed the aforesaid decisions of the High Courts and held:

11. **Excise Appeal No. 51148 of 2020 decided on 01.04.2025**

"21. It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act or sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain."

18. After examining various judgments of the High Courts and the Tribunal, the Tribunal observed as follows:

"28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence."

19. In the preset case, it would be seen that the order of the Commissioner (Appeals) regarding clandestine removal of goods is based on the statement of the Director and the Supervisor of the appellant made under section 14 of the Central Excise Act. These two persons were not examined before the adjudicating authority. Their statements, therefore,

would have no relevance. The finding regarding clandestine removal of goods based on the said statements, therefore, cannot be sustained.

20. The order dated 03.02.2022 passed by the Commissioner (Appeals) would, therefore, have to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **05.12.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Shreya