Hi-Tech Abrasives Ltd. v. Commissioner, Central Excise and Customs, Raipur

Whether clandestine removal can be held proved on a Director's statement recorded during investigation, without following Section 9D of the Central Excise Act.

Date of Order: July 4, 2018
Case Law No: GIB-CGHC-2018-03
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The department visited the factory on 06.06.2003, found shortages of inputs and finished goods, and alleged clandestine removal without payment of duty, with demand of Rs 28.19 lakh, interest and penalties. The Tribunal reversed the Commissioner (Appeals) and restored the demand mainly on the statement of the Director. The assessee argued that the statement was inadmissible under Section 9D and that no other evidence supported the charge.

Final Verdict

The Court held that a statement recorded by an investigating officer is not relevant evidence unless the adjudicating authority examines that person and forms an opinion that the statement should be admitted in the interest of justice. **Without the examination required by Section 9D and the opinion mandated by law, the statement does not constitute relevant and admissible evidence and has to be ignored.** The Tribunal and the adjudicating authority acted illegally in relying on the Director's statement.

The Court added that an inference of clandestine removal cannot rest on shortages or electricity consumption alone; it needs clinching evidence such as proof of transport, receipt of sale proceeds and statements of buyers. The Tribunal's order was set aside and the Commissioner (Appeals) order restored.

© 2026 GST INDIA Biz. All rights reserved.