

**In The Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

**Appeal No. E/12485/2018-SM**

[Arising out of OIA-CCESA-AUDIT-SRT-VK-127-2017-18 dated 06.06.2018 passed by the  
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

M/s Ratnesh Metal Industries Pvt. Ltd Appellant

Vs

C.C.E. & S.T.,- Daman Respondent

**Represented by:**

For Appellant: Shri Vijay B. Joshi (Advocate)

For Respondent: Shri T. K. Sikdar (A.R.)

**CORAM:**

**HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)**

Date of Hearing/Decision: 12.12.2018

**Final Order No. A / 12974 / 2018**

***Per: Ramesh Nair***

The brief facts of the case are that the appellant is manufacturer or supplier of S.S. Round Bar. They have issued invoice No. S.S.1306 dated 20.03.2009, on the said invoice one M/s Sheth Metal Pvt. Ltd, Umargam, Valsad availed cenvat credit. The appellant was imposed penalty for wrongly passing on the said credit.

2. Sh. V. B. Joshi Ld. Counsel appearing on behalf of the appellant at the outset submits that they were not given opportunity to defend their case by adjudicating authority as they have not received any communication for personal hearing. He further submits that the allegation against the appellant is only on the basis of statement of vehicle owner. He submits that they did not have any dealing with the vehicle owner, whereas they hired vehicle from M/s Jay Bhavani Roadlines, therefore, on their part there is no question of any imposition of penalty. He also submits that the transport owner whose statement was recorded, the appellant have requested for cross examination of

said transport owner, but the adjudicating authority neither allowed the cross examination nor even proper opportunity of personal hearing was given.

3. Sh. T.K. Sikdar Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of records, I find that the original authority has passed ex-parte order without providing proper opportunity of personal hearing. Since the entire case against the appellant is based on 3<sup>rd</sup> party evidence i.e. statement of transport owner, it was incumbent on the part of adjudicating authority to grant cross examination of the said witness in terms of Section 9D of Central Excise Act, 1944. Unless and until the witness is examined by the adjudicating authority, his statement cannot be used against the appellant. Accordingly, I find that there is gross violation of principles of natural justice on the part of adjudicating authority. Accordingly, the impugned order is set aside inasmuch as it related to the appellant and remand the matter to adjudicating authority for passing afresh order after allowing cross examination and sufficient opportunity of personal hearing. The appeal is allowed by way of remand to the adjudicating authority.

*(Dictated and pronounced in the open court)*

**(Ramesh Nair)**  
**Member (Judicial)**

Seema