CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench – DB
Court – I

Sl. No.	Appeal No.	Appellant(s)	Respondent (s)	Impugned Order
1.	E/880/2011	Cubex Tubings Ltd.,	CC & CE, Hyderabad -I	OIO No. 10/2010 – C.E. –Commr dt. 29.12.2010
2.	E/881/2011	P.R. Bhandari, Managing Director	-do-	
3.	E/882/2011	Virendra Bhandari, Executive Director	-do-	
4.	E/911/2011	U.M. Bhandari, Executive Director	-do-	
5.	E/912/2011	Surendra Prakash Bhandari	-do-	

Appearance
Shri S. Ravi & Shri V.J. Sankaram, Advocate (s) for the Appellant.
Shri Bhanu Kiran & Shri Arun Kumar AR (s) for the Respondent.

Coram:
Hon'ble Mr. M. V. RAVINDRAN., MEMBER (JUDICIAL)
Hon'ble Mr. P.VENKATA SUBBA RAO, MEMEBER (TECHNICAL)

Date of hearing: 03/10/2018
Date of decision: 21/12/2018

FINAL ORDER No. A/31596-31600/2018

[Order per: M. V. Ravindran.]

All these appeals are directed against Order-in-Original No. 10/2010 – C.E. –Commr dt. 29.12.2010. M/s Cubex Tubing Ltd., (the main appellant) is charged with availment of ineligible CENVAT credit and others are against the imposition of penalties on them.

2. The relevant facts that arise for consideration are:

2.1 The case made out against M/s Cubex in show cause notice is that they have fraudulently availed CENVAT credit on 12 Bills of Entry as detailed in show cause notice, also partially reproduced hereunder pertaining to purchase of copper ingots/scraps on high sea sales basis from M/s. MM Enterprises, Chennai without the actual receipt in their factory of manufacture at Patancheru in A.P. and their consumption in the manufacture of finished goods. Resultantly, it is also alleged that the fraudulently availed CENVAT credit based on those Bills of Entry and utilized the same for payment of duty on their finished goods. The details of same are as under:

Sl. No.	**Bill of Entry No.**	**Date**
1.	753222	30-11-2004
2.	810170	25-02-2005
3.	984363	03-10-2005
4.	995676	17-10-2005
5.	607198	27-10-2005
6.	684093	15-09-2004
7.	690506	28-09-2004
8.	350388	03-11-2004
9.	361098	12-04-2005
10.	369392	10-08-2005
11.	607941	28-10-2005
12.	868396	17-08-2006

2.2 It is alleged that in respect of the Bills of Entry mentioned at Sl. No. 1 to 5 above, the consignments were cleared at Nhavasheva Port, Mumbai through the CHA M/s. Reliance Overseas Services, delivered to M/s. Indo Aryan Central Transport at Turbhe Railway Container Yard and diverted to Tughlakabad, New Delhi. This allegation is sought to be sustained on the basis of investigations done at CONCOR, Turbhe Railway Container Yard and statements recorded under Section 14 of the Central Excise Act, 1944 from various connected individuals such as Sri. Chandrabhan Singh, Partner of M/s. Reliance Overseas Services, Sri. Kaiser Chaglani, Proprietor of M/s. Oriental Logistics and Cargo Carriers, Sri. Manish Mardia, Proprietor of M/s. MM Enterprises, Sri. Omprakash Jhangra of M/s. Indo Aryan Central Transport and the personnel working in M/s. Cubex such as Smt. Tamil Selvi, Excise Assistant, Sri. Mohanlal Sharma, DGM, Sri. M. Rammohan Rao, Assistant Accounts Officer, Sri. PR Bhandari, Managing Director, Sri. U.M. Bhandari, Executive Director, Sri. Virendra Bhandari and Sri. Surendra Bhandari, Chief Executives.

2.3 On perusal of Statements of Sri. Chandrabhan Singh given before investigating authorities, it is seen that he admitted to the fact that High Sea Sales consignments of M/s Cubex were delivered either at Bhiwandi or Turbhe on the instructions of Sri. Manish Mardia of M/s. MM Enterprises and Sri. Surendra Bhandari, he charged amounts towards freight only for the local movement of the goods and that the goods were delivered to Sri. Omprakash Jhangra of M/s. Indo Aryan Central Transport at Turbhe Railway yard and to his knowledge the goods were not further transported to Hyderabad and in one case he organized the LR of M/s. Sai Cargo Movers showing the transport of goods from Nhavasheva to Hyderabad on the request of Sri. Manish Mardia. Further, the depositions made by Sri. Omprakash Jhangra of

M/s. Indo Aryan Central Transport and the investigations at CONCOR, Turbhe Railway Yard revealed that the consignments pertaining to Bills of Entry No. 984363 dated 03-10-2005, 607198 dated 27-10-2005 and 995676 dated 17.10.2005 received at the Railway Yard were booked for dispatch to Tuglakabad, New Delhi by M/s. Indo Aryan Central Transport. Further, M/s. Indo Aryan Central Transport have submitted the Xerox copies of consignment notes no. 908-6083 dated 08.12.2004 and the relevant Lorry Challan for transport of 27.320 MTs of Copper ingots from Turbhe to New Delhi in CONCOR container No. NSAU 2088023 which is corroborated by the forwarding note no. 41247 of CONCOR. In respect of consignment imported under Bill of entry No. 984363 dated 03.10.2005 consignment note Nos. 124 and 125 dated 05.10.2005 showing transport from Mumbai to Hyderabad was issued by M/s. Oriental Logistics, which is admitted by Sri. Chaglani, Proprietor who deposed that only LR/consignment notes were issued without undertaking actual transportation of the goods. Verification of financial records i.e. Carriage Inward Account of M/s. Cubex has revealed that no transport charges are booked for the impugned Bill of Entry.

2.4 As regards the Bills of entry no from 6 to 11 detailed in the table supra, the case of the investigation is that M/s. Oriental Logistics & Cargo Carriers, Chennai have only issued consignment notes without undertaking actual transportation of the goods. Sri. Kaiser Chaglani, Proprietor of the firm vide his statement given under Section 14 of the Central Excise Act admitted to the fact that only consignment notes were issued on the request of Sri. Mahish Mardia of M/s. MM

Enterprises. This is corroborated by the fact that in respect of Bill of Entry No. 607941 dated 28.10.2005 consignment note Nos. 133 & 134 dated 23.11.2005 were issued, whereas there is no evidence of payment of freight charges by M/s. Cubex to M/s. Oriental Logistics. Further, investigations carried out at Federal Bank, Chennai revealed that Sri. Chaglani had opened the Bank Account only after receipt of cheques from M/s. Cubex and the amounts credited were withdrawn immediately and returned in cash to Sri. Manish Mardia. This fact has been admitted by Sri. Chaglani in his statement dated 30.05.2008. When confronted with these details, Sri. U.M. Bhandari, Executive Director of M/s. Cubex could not come up with proper explanation and in fact in the copies of vouchers furnished by him did not contain details of consignment numbers. With respect to Bill of Entry No. 690506, M/s. Oriental have issued consignment note No. 73A dated 07.10.2004. However for the same Bill of Entry, books of accounts of M/s. Cubex shows that consignment note numbers 72&73 dated 06.10.2004 were issued which neither contain the details of vehicle numbers in which the material was transported from Chennai to Hyderabad nor the amount shown as paid in cash towards freight as reflected in the Bank Account of M/s. Oriental. The consignments under Bills of Entry No. 350388 dated 03/11/2004, 361098 dated 12-04-2005 and 369392 dated 10.08.2005 were imported through Tuticorin Port and Sri. Ahmed & Co was the CHA. As per the bills raised by M/s. Ahmed & Co, they have charged for freight towards Trailer Hire to Factory, but when questioned Sri. Surendra Bhandari stated that M/s. Ahmed & Co were paid transport charges upto Chennai only and M/s. Oriental Logistics transported the material from

Chennai to Hyderabad. However, Sri. Chaglani of M/s. Oriental has stated that they have not transported any material and only consignment notes were issued. For instance, in case of Bill of Entry No. 369392 dated 10.08.2005, M/s. Oriental has issued consignment note No. 115 dated 19.08.2005 showing an amount of Rs. 23,000/- towards freight charges, which however is not reflected in the Carriage Inward Account of M/s. Cubex.

2.5 As regards Bill of Entry No. 868396 dated 17.08.2006 at Sl. No. 12 of the above table (in para 45 supra), Sri Chandrabhan A. Singh of M/s Reliance Air-Sea Services, in his statement dt. 16.05.2008 has categorically stated that he organized LR of M/s Sai Cargo Movers showing transport from Nhavasheva to Medak, Hyderabad on the request of Sri Manish Mardia where M/s Sai Cargo Movers have shown freight of Rs. 28,600/- and advance of Rs. 10,750/- with balance amount of Rs. 17,850/- to be paid to the driver. Sri Chandrabhan Singh has further elaborated that Rs. 10,750/- shown as advance was the amount he had charged from Cubex for delivery upto Bhiwandi. In the Bill No. 114/06-07 dated 26.08.2006 of M/s Reliance Air-Sea Services, only Rs. 10,750/- was charged for transport. In the LR No. 037 dt. 24.08.2006 of M/s Sai Cargo Movers, total freight amount is shown as Rs. 28,600/- out of that Rs. 10,750/- was shown as advance and balance amount of Rs. 17,850/- is shown amount to be paid to driver. As seen from the voucher C 1555 dt 31.08.2006 of Cubex, an amount of Rs. 17,850/- in cash was shown as paid to M/s Sai Cargo Movers. No receipt for this payment is available in the records of Cubex. Evidently, no material was transported against the LR No. 037 dt. 24.08.2006 of M/s Sai Cargo Movers.

The Adjudicating Authority after following due process of law and allowing to cross examination of three persons, came to a conclusion that main appellant herein has availed ineligible CENVAT credit, of the CVD paid on imported goods as per the Bills of entries (mentioned herein above) without receipt of the materials, confirmed the demands raised along with interest and also imposed penalties. The Adjudicating Authority imposed penalties on other appellants also holding that they played an active role in availment of ineligible CENVAT credit by main appellant. The appellants are in appeal against these findings.

3. Learned Senior Counsel Shri S. Ravi and Shri V. J. Sankaram advocates appeared on behalf of the all the appellants. Learned Counsel after taking the Bench through the entire case records submitted that the Revenue's case is basically on an allegation that main appellant having imported copper scrap diverted the same and availed the CENVAT credit without receipt of the materials and hence are not eligible for the said CENVAT credit; the reliance is placed by the Revenue to come to a conclusion on statements of the three persons, letter of CONCOR Corporation, letter of RTO stating that two of the vehicles whose registration number is mentioned on the documents are Bajaj Scooters; that the main appellant had failed to produce any evidence regarding receipt of materials in the factory including the payment for freight etc. He draws our attention to the detailed replies given by them, submits that appellant had sought

cross examination of various persons and Adjudicating Authority has given cross examination of only Shri Chaglani Shri Manish R. Mardia, Shri Chandrabhan Singh but declined to give cross examination of officials of CONCOR. He would submit that during the cross examination all the three persons who had given statements have disowned statements and due to which the reliance placed by the Adjudicating Authority on these statements needs to be discarded. It is his submission the reliance placed on the letter of CONCOR Corporation also needs to be discarded as the officials were not produces for cross examination. It is his further submission that the period involved in the case in hand is 25.09.2004 to 04.09.2016 and the show cause notice is issued to appellant on 24.09.2009; that during the relevant period in question, appellant had filed various returns as required under statue indicating the receipts consumption of the materials on which the CENVAT credit was availed; audits were conducted in April, 2006, January, 2007, March 2008 and February, 2010 and there was no allegation that the main appellant had received only the documents and not the materials indicated in such documents hence the authenticity of the documents is not in due. It is his further submission that the Adjudicating Authority in the impugned order has summarily brushed aside the submissions made by main appellant as to in the absence of such huge quantity of scarp, as indicated in the allegation, the main appellant could not have manufactured of final products and cleared the same without payment of duty. He draws our attention to the procurement of scrap which according to the Revenue was not received and submits that correspondingly, there is no findings as to how during the period in question appellant had manufactured and cleared the final products. He would rely on the following decisions:

Commissioner Vs. Motabhai Iron and Steel Industries [2015 (316) E.L.T. 374 (Guj.)]

Motabhai Iron & Steel Industries Vs. CCE, Ahmedabad-II [2014 (302) E.L.T. 69 (Tri.-Ahmedabad –II)]

Akshay LPG Valves Vs. CC & CE, Hyderabad –IV [2016 (337) E.L.T. 129 (Tri.-Hyd.)]

Krebs Biochemicals & Industries Ltd., Vs. CCE & ST, Visakhapatnam [2017 (352) E.L.T. 261 (Tri.-Hyd.)]

SM Energy Teknik & Electronics Ltd., Vs. CCE & ST, Vadodara – II [2015 (328) E.L.T. 443 (Tri. – Ahmd.)]

It is his submission, in view of the above, the decided case laws on this issue the impugned order be set aside.

4. Learned Departmental Representative after giving overall picture of the allegations in the show cause notice and findings of the Adjudicating Authority submits as under:

> ***(I) "Statement of Sri ChandrabhanA.Singh partner of M/S Reliance Overseas Services (CHA).***
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> - *From the statement of Sri ChandrabhanA.Singh partner of M/S Reliance Overseas Services recorded on 15.05.2008 & 16.05.2008 (Annexure A-16 & A-17 to SCN), and on the basis of records produced in this regard by the concerned it is held that all high sea sales consignments of M/s.Cubex (Appellant) purchased from M/s.MM Enterprises in respect of five bills of entries mentioned at Sl.No.1 to 5, were delivered to Sri. Omprakash of M/S Indo Arya Transport at Turbhe Railway Yard as per the instructionsof Sri Manish Mardia and Sri Surendra Bhandari(M/s.Cubex).*
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> - *In one Bill of Entry No. 868396 dt 17.08.2006, (Sl.No.7) Sri ChandrabhanA.Singh organized LR of M/S Sai Cargo Movers showing transport from Nhavasheva to Medak, Hyderabad on the request of Sri Manish Mardia, without actually transporting them.Freightamount of Rs 28,600/- was shown against the LR of M/s.Sai Cargo movers with an advance of Rs 10,750/- towards initial payment and balance of Rs 17,850/-*

to be paid to the driver. It is noted that Rs.10,750/- shown as advance was only charged by him from M/s.Cubex for delivery upto Bhiwandi andcategorically stated by him the LR was issued to M/s.Cubex without actual delivery of goods to Medak.

(II) Statement of Sri Omprakash Jangra, representing M/S Indo Arya Central Transport Ltd.

- *On the basis of the statement of Sri Omprakash Jangra, representing M/S Indo Arya Central ,Transport Ltd in the Turbhe Railway Yard given on dt 17.05.2008 & 6.06.2008 (Annexure A-18 &A- 19 to SCN),and records produced by him it is held that as per the directions given to him by Shri.ManishMardia on phone and based on the particulars furnished by the persons accompanying the containers he used to book the consignments to Delhi by CONCOR container.*
- *further that he had handled about six to seven copper consignments of Sri Manish Mardia in the above manner; and the details produced by Sri Omprakash Jhangra, vide his letter dt 06.06.2008 & 20.06.2008, such as copies of consignment notes, relevant documents, i.e; their LRs, Copy of Lorry Challans, IWBs of CONCOR and Money receipt with regard to receipt of their payment as a proof of booking the cargo to Delhi it proves that the goods were sent to Delhi instead of Hyd.*

(III) Report of CONCOR Turbhe railway container yard

- *On the basis of details submitted by Sri.OmprakashJhangra, further details were called for from M/s.Concor and from the report submitted by Terminal Manager, CONCOR, Turbhe Railway Container yard vide letter dt 24.05.2008 (Annexure -B/3 to SCN) it is found thatin respect of Bill of Entry No. 984363 dt 03.10.2005, Container No. PMLU2025194 of Copper Scrap is received in Turbhe Yard through vehicle No. MP09KC1968 . which was loaded in Container No. CSQU3062479 with seal no. 829178 on 06.10.2005 under IWB No. 541670 for dispatch to TKD (Tukhlaghabad).*
- *In respect of Bill of Entry No.607198 dt 27.10.2005, it is observed that as per Terminal Stuffing Register, 29 bags of Copper Scrap was received at the terminal through vehicle No. MH04H396 which was loaded in container no.ILCU5036047 with seal no. 830142 on 12.11.2005 under IWB No.542039 for dispatch to TKD (Tukhalghabad).*
- *In respect of Bill of Entry No. 995676 dt 17.10.2005, it is observed that 27.5 MT of Copper Ingots were booked by M/S Indo Arya CentralTransport In container no. ILCU 5042749 under IWB No. 541854 for delivery at Tughlakabad.*

C. Material covered under Bills of Entry for which the appellant has produced consignment notes issued by M/s oriental logistics and cargo carriers without actual transportation:

Sl. No.	*Bill of entry No.*	*Date.*	*Description of material*	*Port of import*	*Name of the transporter*	*remarks*
1.	*984363*	*03.10.05*	*Copper scrap*	*Nhavasheva Mumbai*	*M/s.Oriental.*	*Consign. Note No. 124&125 dt 5.10.2005*
2.	*607941*	*28.10.05*	*-do-*	*Nhavasheva Mumbai*	*M/s.Oriental*	*Consgn.Note Nos.133&134*

						Dt.23.10.05

- *On the basis of records and from the statements of Sri Kaiser .A.Chaglani, Prop of M/S Oriental Logistics and Cargo Carriers, dt 28.05.2008 & 30.05.2008 (attached as Annexure A-20& A-21 to SCN) it is found that the Consignment Note Nos. OLCC/CH/0124 & 125 dt 05.10.2005 and OLCC/CH/0133 & 134 dt 23.11.2005 were issued without actually transporting the goods and these four Consignment Notes were issued for a cost of Rs.300/- per consignment note, on request made by Sri Manish Mardia of M/S M.M.Enterprises.*

D. Details of Bills of Entries against which goods are imported through Chennai and Tuticorin Ports.

Sl. No.	*Bill of entry No.*	*Date.*	*Description of material*	*Port of import*	*Name of the transporter*	*remarks*
1.	*684093*	*15.09.2004*	*Copper ingots*	*Chennai*	*Oriental*	*Consgn.Note nos.71A dt 20.09.04*
2.	*690506*	*28.09.2004*	*copper*	*Chennai*	*Oriental*	*Consign.Note Nos.73A dt.07.10.04*
3.	*350388*	*03.11.2004*	*Copper Ingots*	*Tuticorin*	*Oriental*	*Consign.Note Nos.78A dt.15.11.04*
4.	*361098*	*12.04.2005*	*-do-*	*Tuticorin*	*Oriental*	*Consign.Note Nos.103 dt.22.04.05*
5.	*369392*	*10.08.2005*	*-do-*	*Tuticorin*	*Oriental*	*Consign.Note Nos.115 dt.19.8.05*

- *For the consignment imported through Chennai Port the appellant engaged M/s. Fair deal enterprises and M/s.Vector Freight Forwarders for clearance of consignments.*
- *For the consignments imported through Tuticorin Port the appellant engaged M/s.A.M.Ahmed& Co. as CHA for clearance of their consignments.*

E. Details of Bills of Entry for which the appellant has produced two different sets of consignment notes.

E.1. Issued by M/s.Oriental Logistics and Cargo Carriers.

Sl.No.	*BE.No.*	*Date*	*CN.Nos*	*Vehicle no.*	*consigner*	*From*	*To*
1	*684093*	*15.09.04*	*71A 20.09.04*	*TN 22AB 1010*	*Fair Deal Enterprises*	*Chennai*	*Hyd*
2.	*690506*	*28.09.04*	*73A 07.10.04*	*TN 27AL 1310*	*-DO-*	*Chennai*	*Hyd*
3.	*350388*	*03.11.04*	*78A 15.11.04*	*TN 27AL 1310*	*A.M.Ahamed& Co.*	*Chennai*	*Hyd*
4.	*361098*	*12.04.05*	*103 22.04.05*	*TN 22AB 1010*	*A.M.Ahamed& Co*	*Chennai*	*Hyd*
5.	*369392*	*10.08.05*	*115 19.08.05*	*TN 22AB 1016*	*A.M.Ahamed& Co.*	*Tuticorin*	*Hyd*

- *On the basis of the statements from Sri Kaiser A.Chaglani, Prop of M/S Oriental Logistics and Cargo Carriers, given on 28.05.2008 & 30.05.2008 (attached as Annexure A-20& A-21) and records submitted it is found that all the above consignment notes were issued on request of Sri Manish Mardia and in the above cases wherever freight amount shown in the consignment notes was received by cheques the same was returned in cash to Sri Manish Mardia after realization of cheques.*

E.2. *In respect of the same Bills of entries the appellant had also produced way bills generated in the name and style as Form XX-A issued by Tamil Nadu General sales tax Rules 1959 with the numbers of trailers/lorries as a proof of transport of the goods from Chennai/ Tuticorin to Hyderabad, as detailed below.*

Sl. No.	*BE.No./dt*	*FormXX-A/date*	*Trailer/lorry no.*	*consigner*	*From*	*To*
1	*684093/ 15.09.04*	*806563/ 16.09.04 906584 16.09.04*	*TNQ1926 TNQ1926*	*Fair Deal Enterprises*	*Chennai*	*Hyd*
2.	*690506/ 28.09.04*	*906633/ 06.10.04 794756/ 06.10.04*	*TND6897 TND 6897*	*-do-*	*Chennai*	*Hyd*
3.	*350388/ 03.11.04*	*503747/ 11.11.2004*	*TN28Q 0649*	*A.M.Ahamed& Co.*	*Chennai*	*Hyd*
4.	*361098/ 12.04.05*	*072570/ 18.04.2005*	*TN69J 2499/ TDL 6912*	*A.M.Ahamed& Co*	*Chennai*	*Hyd*
5.	*369392/ 10.08.05*	*072653/ 17.08.2005*	*TN69J 2499.*	*A.M.Ahamed& Co.*	*Tuticorin*	*Hyd*

** From the details provided above as in tables under E.1 &E.2 it was noted that there are two different types of consignment notes issuedagainst the same bills of entries, by two different parties, with different vehicles numbers in each case.*

*** though certain payments were shown as made by way of drawing some vouchers and bills in favour of M/s.Fairdeal Enterprises and M/s.A.M.Ahamed& Co., Shri. Surendra Bhandari of M/s. Cubexon 18.06.2008 (Annexure A-9 to SCN) categorically stated that the payments were only towards transportation of goods by lorries/trailers, provided by M/s. Fair deal and M/s. A.M.Ahmed and Co., up to Chennai only and there after they used the vehicles of M/s.Oriental (as given in table E.1.) for transporting the goods to Hyderabad. Hence theclaim that the vehicles mentioned in the FORM-XXA were actually used for transport of the goods up to Hyderabad is not correct and misleading and it conclusively proves that the goods have never received by the appellant to their factory.*

F. Reports by Commercial tax department and transport department of Chennai.

- *The commercial tax department of Andhra Pradesh vide their letter dated CCT's Enfl.RefNo.B3/129/2008 dt:-08-2009 addressed to the Deputy director DGCEI, Hyderabad has submitted that none of the vehicles mentioned in the consignment notes have actually entered AP during eh material period. (Copy enclosed)*

Sl. No.	*BE.No.*	*Consignment Note No.*	*Vehicle No.*	*Report of the Commercial tax*

				department.
1	*684093 dt.15.09.2004*	*71A dt.25.09.04*	*TN 22AB 1010*	*NO (112)*
2	*690506 dt.28.09.04*	*73A dt.07.10.04*	*TN 27AL 1310*	*NO(111)*
3	*350388 dt 03.11.2004*	*78A dt. 15.11.2004*	*TN 27AL 1310*	*NO(111)*
4	*361098 dt 12.04.2005*	*103 dt. 22.04.2005*	*TN 22AB 1010*	*NO(110)*
5	*369392 dt. 10.08.2005*	*115 dt.19.08.2005*	*TN 22AB 1016*	*NO(109)*
6	*984363 dt.03.10.2005*	*124 dt.05.10.2005*	*TN 22AB 1016*	*NO(108)*
7.	*984363 dt 03.10.2005*	*125 dt.0510.2005*	*TN 22AB 1010*	*NO(107)*
8	*607941 dt.28.10.2005*	*133 dt.23.11.2005*	*TN 22AB 1016*	*NO(106)*
9	*607941 dt.28.10.2005*	*134 dt 23.11.2005*	*TN 22AB 1010*	*NO(105)*
10	*868396 dt.17.08.2006*	*37 dt.2408.2006*	*HR 38H 5695*	*NO(104)*

- *Further enquiries made with the Regional Transport Office Meenambakam at Alandur, Chennai 600016, with regard to vehicles numbers provided by the appellant, it is submitted by the Transport Officer, Meenambakkam vide his letter No.B7/070504/2009 dated 17.07.2009 that no vehicle was registered under Registration No.TN22AB 1016 and the vehicle registered under Registration No. TN 22AB1010 was a Bajaj Pulsar Motor Cycle. From the above it is held that the vehicle nos. Provided are not genuine. In other words, no vehicle was used for the transportation of goods mentioned in the above said consignment notes. The above verification reports further corroborates the fact that no goods were transported against the consignment notes of M/S Oriental Logistics and Cargo Carriers.*
- *Further the CAG report on which the appellant relies is only a general report and not specific to any particular Integrated check post or Border Check Post. The discrepancies observed by the CAG are only with regard to .5% of the Total vehicles entered into AP during the period from 2003-05. Hence the plea that their vehicles actual entry into AP was not captured does not hold any water and consequently rejected.*

G. Verification of financial records (carriage inward account).

- *Out of the five bills of entries as detailed below;*

Sl. No.	*Bill of entry No.*	*Date.*	*Description of material*	*Port of import*	*Name of the transporter*	*remarks*
1	*753222*	*30.11.2004*	*Copper ingots*	*Nhavasheva Mumbai.*	*---*	*Delivered at turbhe*
2.	*810170*	*25.02.2005*	*-do-*	*Nhavasheva Mumbai*	*--*	*Delivered at turbhe*
3.	*984363*	*03.10.05*	*Copper scrap*	*Nhavasheva Mumbai*	*--*	*Delivered at turbhe*
4.	*995676*	*17.10.05*	*-do-*	*Nhavasheva Mumbai*	*--*	*Delivered at Turbhe*
5.	*607198*	*27.10.2005*	*-do-*	*Nhavasheva Mumbai*	*--*	*Delivered at Turbhe*

- *In respect of bill of entry No.984363 DT.03.10.2005,(Sl.No.3) Consignment note Nos. 124 and 125 dt 05.10.2005 showing transport from Mumbai to M/s. cubex was issued by M/s.Oriental Logistics and cargo carriers and in respect of other four no transport documents evidencing the transport of material from Mumbai to M/s.CubexPatancheru, Hyderabad are available. Further as seen from the CHA bills as detailed below,*

Sl.No.	*CHA bill no.*	*BE NO.*
1	*108/04-05 DT.11.12.2004*	*753222 DT. 30.11.2004*
2.	*156/04-05 DT.08.03.2005*	*810170 DT. 25.02.2005*
3.	*108/05-06 DT.22.10.2005*	*995676 DT. 17.10.2005*
4.	*114/05-06 DT.16.11.2005*	*607198 DT. 27.10.2005*

- *The amounts were charged for local transportation only by the CHA. Had the transportation charges were directly born by the appellant, consignment note/LR should have been there and more importantly transportation charges should have been booked and shown in carriage inward A/c of the appellant.*

- *Further in respect of following consignment notes*

Sl. no.	*Consignment not .*	*BE NO.*
1.	*124 & 125 dt.05.10.2005*	*984363 dt 03.10.2005*
2.	*133 & 134 dt.23.11.2005*	*607941 dt.28.10.2005*

- *For the first consignment note freight amount was paid in cash, but the amounts are not reflected in the bank statement of m/s. Oriental logistics and cargo carriers. In the case of second consignment there is no evidence of payment of freight charges to the transporter in the carriage inward account of M/s.cubex.*
- *The appellant has issued cheques for amounts of Rs.20,700/-(chq. No.44743), Rs.20,500/-(chq no.44742), Rs.20,500/-(Chq.no.44741) to the transporter on 1.07.2005 which were credited to the account of the transporter on 22.07.2005 and on 23.07.2005 Rs.60,000/- was withdrawn. It is pertinent to note that Sri.Chaglani in his statement dated 30.05.2008 has categorically deposed that wherever freight amounts as shown in the consignment notes was received by cheques, it was returned in cash to Shri.ManishMardia. In the instant case also amounts were withdrawn immediately to pay back to manishmardia.*
- *Further when Sri.U.M.Bhandari, Executive director of cubex, who is also in-charge of accounts was asked to state as towards which consignments notes the payments vide the referred cheques were made , for which he replied in negative. Though he submitted copies of relevant payment vouchers, even these vouchers do not contain any details about consignment note nos.*
- *Out of the seven consignment notes issued by M/s.Oriental, four consignment notes were issued prior to 1.07.2005 i.e.*

Sl. No.	*Consignment note*
1.	*71A dt 20.09.2004*
2.	*73A dt.7.10.2004*
3.	*78A dt.15.11.2004*
4.	*103 dt 22.04.2005*

- *In the case of bill of entry No.690506 dt.28.09.2004 as per the books submitted by Shri.Chaglani Consignment note 73A dt 7.10.2004 was issued, however for the same bill of entry, as available in the books with the M/s.Cubex consignment notes 72 & 73 dated 6.10.2004 were issued by Mr.Chaglani.*
- *For these consignment notes i.e. 72 & 73 an amount of Rs.8500 each was shown as paid in cash. These amounts shown as paid in cash were not reflecting in the bank statement of Shri.Chaglani and further these consignment notes does not have any vehicle numbers to show that the material has been transported to Hyd from Chennai.*
- *So for the same bill of entry parallel consignment notes with different Sl.Nos have been issued.*
- *Even to consider that the amounts paid by cheque pertains to other three consignment notes i.e. 71A, 78A and 103 is not possible since at the time of issue of the above consignment notes Shri.Chagalani has not even opened a Bank account. The Bank account was opened in the month of July 2005.. The cheques were issued after a gap of 8 to 10 months after issue of consignment notes only to square up the transactions.*
- *Further it was noticed from the carriage inward account of M/s.Cubex, an amount of 25,416/- has been paid to Mr.Chaglani vide Cheque No.290944 dt.06.12.2005, further an amount of Rs.584/- towards TDS was debited to the account of M/s.Oriental logistics. However the amounts shown vide these entries has been nullified by passing a reverse entry on 31.12.2005 and as such no payment was made to the Oriental.*

H. Burden of proof cast on the Appellant not discharged.

Department had raised a presumption against the appellant and has produced substantial evidence and conclusively proved that the goods have not received into the factory. The appellant could not produce any cogent evidence either with regard to the goods imported through Mumbai or through Chennai and Tuticorin, to substantiate their claims.

In the given situation the Original authority had considered all the details minutely and rightly held the order against the appellant.

In view of the above submissions, it is prayed that the Hon'ble tribunal to up-hold the order of original authority in its entirety by dismissing the appeal of the appellant."

5. He relies upon the decision of this Bench in the case of Binjusaria Metal Box Co. Pvt. Ltd., Vs. CCCE, Hyderabad- IV Final Order No. A/30823-30824/2018 dated 03.08.2018 to submit that if the vehicles are not capable to transport the loads that it is enough to indicate that appellant had not received the inputs.

6. The Learned Senior Counsel in rejoinder submits that in so far as consignments that came from Chennai, Tuticorin enumerated in the table submitted by SDR, the main appellant had filed way bills generated under the Tamil Nadu VAT and the details of bills of the Bills of Entry and the Lorry Nos. as stated in the way bills and relevant pages of the paper book volume 1 (wherein the documents are annexed) as per the allegations in the show cause notice are tabulated below:

Sl. No.	Bill of Entry No. & Date	Lorry No.	Way Bill Date	Page No. of Appeal Memo
8.	684093 15-09-2004	Trailer No. TNQ 1926	16-09-2004	177/179
9.	690506 28-09-2004	TMD 6897	06-10-2004	173/174
10.	350388 03-11-2004	TN28Q 0649	11-11-2004	182
11.	361098 12-04-2005	TN69J 2499 Trailer No. TDL 6912	18-04-2005	184
12.	369392 10-08-2005	TN69J 2449	17-08-2005	187

It is his further submission that the letter relied upon by the Learned Departmental Representative as also by Commissioner on the letter of Concor, that none of the bill of entry number is not mentioned in the letter of Concor Corporation has been is reflected in the register maintained by Concor. Then, he draws our attention to the said register and submits that in the absence of any mentioning of bill of entry, it cannot be stated that the consignments were loaded and dispatched to Tughlakabad; that having not granted cross examination of these officers that evidence needs to be discarded.

7. We have heard both sides and perused the records.

8. On perusal of records, it is noticed that the confirmation of the demand with interest and imposing penalty on the main appellant and penalty on all other three appellants is on a finding that main appellant had availed CENVAT credit of CVD paid on imported goods in respect of bills of entries (mentioned in paragraph 2.1) without receipt of imported goods; the goods were diverted to other places; the individuals played a role in such act.

9. On perusal of the impugned Order-in-Original after reproducing the allegations in the show cause notice replies and the details of the cross examination, the Adjudicating Authority has from paragraph No. 44 to 48 recorded the details, in paragraph No. 49, 50 & 51 he discussed the limitation aspect of the case. In paragraph No. 52 he reproduced the defences put forth by the main appellant, other appellants, and recorded findings against the main appellant is paragraph No. 53 which is reproduced:

> ***"53.*** *While it is argued by M/s Cubex that there was no evidence that the imported consignments were not received in their factory, it is found that, as detailed in paras supra, the investigation has come up with overwhelming evidence in support of the contention that the consignments were diverted and no material pertaining to the impugned Bills of Entry was received in the factory. <u>On the contrary, it is found that M/s Cubex could not come up with an even an iota of evidence that the goods were indeed received in the factory of manufacture and put to use. It has already been clearly brought out in the preceding paras based on the statements recorded from various related individuals supported by corroborative evidence that the documentations on which the defence have been harping are fake and created for the sole purpose of taking credit fraudulently. Arguments such</u>*

> *as no manufacture could have been possible but for the receipt of the goods, are of no relevance in the instant case where the fraud perpetrated by the notice(s) is comprehensively proved. Further, in this regard, it would be pertinent to refer to the show cause notice issued to M/s. Cubex vide F. No. DGCEI/HYRU/12-16/2008SCN No. 88/2008 dated 17.09.2008 relating to proposal for confiscation of 14.054 MT of seized unaccounted copper scrap procured from open market apart from other proposals. The Adjudicating authority in Order-in-Original No. 3/2009 dated 02.02.2009 apparently dropped the proposal for confiscation as they did not avail any CENVAT credit on the same and no contravention of Rules was found. Purchase of non-duty paid bazaar scraps and not accounted in their records, supports the allegation of clandestine procurement of raw materials, manufacture of finished goods out of it and clearance of finished goods on payment of duty utilising fraudulently availed CENVAT credit on alleged imported materials. This goes on to prove that M/s Cubex have manufactured and cleared finished goods without the actual receipt of the material pertaining to the impugned Bills of Entry. As far as the reliance placed on the Forms XXA of Tamil Nadu Sales Rules in support of the contention that the consignments were transported from Chennai to Hyderabad, it is common sense that the goods have to invariably pass through the Sales Tax check posts of Andhra Pradesh before reaching the factory of manufacture. Enquiries with the Commercial Taxes Department of Government of Andhra Pradesh have revealed that none of the consignments have entered the state of Andhra Pradesh leave alone reaching Medak District which is at a considerable distance from the Andhra Pradesh-Tamil Nadu border. In this regard, M/s. Cubex have drawn reference to the CAG's report for the year ended 31.03.2006 bringing out the lacunae and improper posting of information by check post authorities in support of the contention that the non-posting of entries at the check post cannot be held against them. It is found that the report of the CAG is a general observation which cannot be applied to the specifics of the instant case where it is already proved with substantial evidence that the consignments were diverted. Further, enquiries made by the investigating authorities with the jurisdictional Regional Transport Office, Meenambankam at Alandur, Chennai revealed that vehicle No. TN22 AB 1016 mentioned in certain consignment notes (as detailed in para 22.4 supra) were not registered with them and the registration number TN22 AB 1010 pertained to Bajaj Pulsar Motor Cycle. The defence put forth by Sri. Chaglani of M/s. Oriental Logistics at the time of cross-examination that the driver might have changed the number plate of the vehicle with the ulterior motive to steal the material is ludicrous and can be attributed to afterthought."*
>
> *(emphasis supplied)*

It can be seen from the above reproduced paragraph No. 53, the entire case of the Revenue and the Adjudicating Authority while holding against the main appellant is on statements recorded of individuals, it is also recorded that corroborative evidence documentation on which defence for availing CENVAT credit was not produced. As it can be seen from the above reproduced paragraph of the Adjudicating Authority, he has not brought on record in the findings portion, how he has come to a conclusion that there were purchases of bazar scrap and the same was unaccounted; there is nothing on record to indicate the investigation was taken up with scrap dealers. In our view, there seems to be no evidence in any form to indicate purchases of unaccounted bazar scrap. As regards the registration number of vehicle mentioned, document indicated was of a Bajaj pulsar motor cycle, we notice that Counsel for main appellant has correctly pointed out that Lorry/Trailer Numbers are specifically mentioned (as reproduced in paragraph No. 6 herein above) does indicate so, it is not proved beyond doubt that the vehicle number of Bajaj Pulsar was mentioned intentionally on behest of main appellant. Further it can be noticed that the main appellant was taking a consistent stand before the lower authorities they had religiously recorded the receipts and consumption of imported goods in the statutory of books and cleared manufactured products on payment of appropriate duty. The details as given by main appellants in form of RG-23A part I&II, RGI etc., are not controverted by the Adjudicating Authority in the findings (which are reproduced herein above) but pleas were dismissed by recording that the main appellant had not produced evidence of receipt of materials in their factory. Adjudicating authority has not considered the plea holistically as to how can a manufacturing activity take place, without receipt of raw materials. To that extent, the main appellant’s contention that they had manufactured final products and cleared the same during the period in question remains uncontroverted. As regards the RG-23 part I& II and statutory books, it is noticed that this position is unchallenged, it can be noted that same were maintained and produced before audit parties during scrutiny of records, on various dates for the period in question. If that be so and there being no adverse observation in the various audit report, as to there may be a case of non-receipt of inputs, entire case of the revenue is based on the statements will fall under its own weight as during cross examination the individuals have denied to have made the statements, which would mean that there is lack of cogent evidences. On this ground itself the entire demand fails.

10. This our view is fortified by the decision and the judgment of Hon'ble High Court of Gujarat in the case of *Commissioner Vs. Motabhai Iron And Steel Industries* [2015 (316) E.L.T. 374]. This view also stands fortified by the decision of the Tribunal in the case of *Bhakti Alloys Pvt. Ltd.,* [2016 (41) STR 554] and this Bench in the case of *SM Energy Teknik & Electronics Ltd.,* [2015 (328) ELT 443], Final Order No. A/31809-31810/2017 dated 13.11.2017 held so the facts in the case of *Finecab Wires & Cables Pvt. Ltd.,* (Final Order A/31809-31810/2017) are *pari materia* to the case in hand.

11. Further we find that reliance is placed more specifically on the statements of Shri Kaiser Chaglani, Shri Manish Mardia and Shri Chandrabhan Singh to hold against main appellant. On perusal of the records of cross examination conducted before the Adjudicating Authority, it is noticed that all the three individuals have categorically stated that statements were not voluntary and the said statements were prepared, they were directed to sign the same; it is also noticed

that investigating officer was present during the cross examination, was permitted to reexamine the individuals; he exercised the right, but nothing incriminating came out of such re-examination of individuals. It is settled law, if the statements were denied being voluntary during the cross examination, reliance cannot placed on those statements unless there is corroborative evidences. Further, it is noticed that the individuals who were handling business activity of the main appellant i.e., Shri PR Bhandari, Shri U.M. Bhandari, Shri Virendra and Shri Surendra Bhandari, had not given any statement which is inculpatory in nature to indicate CENVAT credit was availed without receipt of any materials. In the absence of any corroborative evidences, it has to be held that the Revenue has not been able to prove that CENVAT credit of the CVD paid on the Bills of entry was availed without receipt of inputs.

12. As regards demands confirmed on letter written by Concor Corporation that there was receipt of imported goods at Turbhe and transported to place other than Hyderabad. We find that the main appellant had been seeking cross examination of the officials, which was declined by the Adjudicating Authority. It is settled law that no reliance can be placed on a document which is not tested in cross examination if specifically sought. At the same time, we are of the opinion that Adjudicating Authority should be extended an opportunity to consider the plea of cross examination of the individuals from Concor Corporation. Accordingly, we remit the issue in respect of demand of bills of entry No. 984363/03.10.2005, 995676/17.10.2005 & 607198/27.10.2005 (as at page No. 209 of appeal Memo) to the

Adjudicating Authority to reconsider the issue. Needless to state that the adjudicating authority will follow principles of natural justice before coming to a conclusion. As regards penalties on individuals, we note that on majority of demand is set aside, on merits itself, we have to hold that penalties on individuals cannot be sustained. Accordingly penalties on all appellants are set aside.

13. In sum demand confirmed as ineligible CENVAT credit in respect of bill of entry Nos. 753222/30.11.2004, 810170/25.02.2005, 684093/15.09.2004, 690506/28.09.2004, 350388/03.11.2004, 361098/12.04.2005, 369392/10.08.2005, 607941/28.10.2005, 868396/17.08.2006 are set aside, so also demand for interest and penalties, while demands in respect of CENVAT credit in respect of Bills of Entry No. 984363/03.10.2005, 995676/17.10.2005 & 607198/27.10.2005 are remitted to adjudicating authority for reconsideration as indicated herein above.

(Order pronounced on 21/12/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M. V. RAVINDRAN
MEMBER(JUDICIAL)

Lakshmi….