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

Division Bench
Court - I

Appeal No.	Appellant	Respondent	Impugned Order No. & Date
E/1212/2011	Cubex Tubings Ltd.	CCE, C&ST, Hyderabad-I	**O-I-O No. 04/2011 (CE)-Commr. Dated 31.01.2011 passed by CCCE, Hyderabad-I.**
E/1238/2011	P.H. Bhandari, Managing Director, Cubex Tubings Ltd.	.do.	.do.
E/1239/2011	Virendra Bhandari, Cubex Tubings Ltd.	.do.	.do.
E/1240/2011	U.M. Bhandari, Cubex Tubings Ltd.	.do.	.do.
E/1241/2011	Surendra Bhandari, Cubex Tubings Ltd.	.do.	.do.
E/1245/2011	Satish Agarwal, Partner, Time & Space Haulers	.do.	.do.

Appearance
S/Shri S. Ravi, Sr. Advocate and V.J. Shankaram, Advocate for appellant
Shri Arun Kumar, Jt. Commissioner/AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 18.02.2019
Date of Decision: 28.02.2019

FINAL ORDER No. A/30291 – 30296/2019

[Order per: Mr. M.V. Ravindran)

1. All these appeals are directed against Order-in-Original No. 04/2011 (CE)-Commr. Dated 31.01.2011.

2. On perusal of records, it transpires that the issue is regarding confirmation of demands against the main appellant M/s Cubex Tubings Limited for availing CENVAT credit of certain bills of entry which according to the Revenue were never received by the appellant in their factory premises. Show cause notice was issued for reversal of such an amount. Appellants contested the show cause notice on merits and also sought for cross examination of various persons on whose statement a reliance was placed in the show cause notice to allege that appellant had not received the inputs on which CENVAT Credit was availed. The adjudicating authority in the impugned order recorded that three persons were called for cross examination but they did not turn up and did not give cross examination of others and pass the orders confirming the demands and imposed penalties on all the appellants.

3. Ld. Sr. Counsel draws our attention to the O-I-O and various records and submits that the entire case made up by the Revenue is based on the statements recorded by various individuals who were either employees, partners of the transport company of Time & Space Haulers. It is his statement that in order to bring out the truth that they had received the material on which CENVAT Credit was availed, they sought cross examination of the persons, which is not granted to them. He submits that the law is now well settled by the decision of Hon'ble High Court of Punjab

& Haryana in the case of Ambika International [2016-TIOL-1238-HC-P&H-CX] and by HI Tech Abrasives Ltd. [2018(352)ELT 961 (Chattisgarh)].

4. Ld. DR reiterated the findings of the lower authorities.

5. On careful consideration, we find that the appellant herein was seeking for the cross examination of various persons as indicated in their appeal memorandum in order to defend the allegation raised in the show cause notice. The adjudicating authority did not grant the said cross examination. In our view, the entire case needs reconsideration by the adjudicating authority, as Hon'ble High Court of Punjab & Haryana in the case of Ambika International and Hon'ble High Court of Chattisgarh in the case of HiTech Abrasives Limited have laid down the law that provisions of Section 9D of Central Excise Act, 1944 has to be followed scrupulously before deciding the issue in adjudicating proceedings. The said ratio is binding on the adjudicating authority also.

6. In view of the foregoing, without expressing any opinion on the merits of the case, leaving all the issues open, the impugned order is set aside and the matters are remitted back to the adjudicating authority to reconsider the issue afresh after following the provisions of Section 9D of Central Excise Act, 1944 as has been held by Hon'ble High Courts of Punjab &

Haryana and Chattisgarh, before coming to the conclusion on the matter and following the principles of natural justice.

7. All the appeals are disposed of by way of remand to the adjudicating authority.

(Pronounced in open court on 28.02.2019)

(P.VENKATA SUBBA RAO) MEMBER (TECHNICAL)	(M.V. RAVINDRAN) MEMBER (JUDICIAL)

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