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

Division Bench
Court - I

Appeal No.	Appellant	Respondent	Impugned Order No. & Date
E/41/2009	Orchid Export	CCE,C&ST, Hyderabad-III	**O-I-O No. 18/2008-CE-Hyd.-III-Commr. Dated 17.09.2008 passed by CCCE, Hyderabad-III Commissisonerate**
E/42/2009	G. Krishna Reddy	.do.	.do.
E/87/2009	Paris Waves	.do.	.do.

Appearance
Shri K. Vijay Kumar, 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: 20.02.2019
Date of Decision: 28.02.2019

FINAL ORDER No. A/30297 – 30299/2019

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

1. All these appeals are directed against Order-in-Original No. O-I-O No. 18/2008-CE-Hyd.-III-Commr. Dated 17.09.2008.

2. The relevant facts that arise for consideration are the main appellant (M/s Orchid Export) are engaged in the manufacture and export of garments and availed CENVAT Credit of the materials procured by them for

manufacturing of such garments. On an investigation by the DGCEI authorities, it was the apprehension that the appellant had availed ineligible CENVAT Credit without receipt of the materials from the supplier. Show cause notice dated 14.06.2006 was issued to the appellant seeking reversal/demand of such an amount as also the demand of interest and proposal was there to impose penalties on main appellant and other appellants. Appellant herein, in reply to the said show cause notice, sought for cross examination of the persons on whose statement the show cause notice relied upon for alleging that they had availed the CENVAT Credit. The adjudicating authority did not agree to the request for the cross examination as sought for by the appellants, after following other due process of law, confirmed the demands so raised with interest and imposed penalties.

3. Ld. Counsel, at the outset, submits that the adjudicating authority has erred in not granting the cross examination of the people and further that the law on examination and cross examination now has been settled by various decisions of Hon'ble High Court of Punjab & Haryana in the case of Ambika International [2016-TIOL-1238-HC-P&H-CX] and Hon'ble High Court of Chattisgarh in the case of HI Tech Abrasives Ltd. [2018(362) ELT 961 (Chattisgarh). He would submit that the matter be remitted back to the adjudicating authority to follow the provisions of Section 9D of Central Excise Act, 1944 and subsequently come to the conclusion after following the principles of natural justice.

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

5. On careful consideration of the submissions made, we find that the adjudicating authority has not granted any cross examination of the persons which was sought to by the appellant. In our view, the law is settled on the point of examination and cross examination of the persons on whose statement reliance is sought to be placed, that is it needs to undergo the rigours of the provisions of Section 9D of Central Excise Act, 1944. This is the law settled by Hon'ble High Court of Punjab & Haryana in the case of Ambika International and Hon'ble High Court of Chattisgarh in the case of HI Tech Abrasives Limited. Without expressing any opinion on the merits of the case, leaving all issues open, we remit the matter back to the adjudicating authority to reconsider the issue afresh, after following the ratio laid down by Hon'ble High Court of Punjab & Haryana in the case of Ambika International and Hon'ble High Court of Chattisgarh in the case of HI Tech Abrasives Limited as to the following the rigours of Section 9D of Central Excise Act, 1944.

6. 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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