

Demand cannot be confirmed by relying on third-party evidence not cross-examined

The Hon'ble Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad ("**the CESTAT**") in the case of *M/s Meera Pipes Pvt. Ltd. v. C.C.E. and S.T., Ahmedabad [Excise Appeal No.10276 of 2019 decided on October 11, 2021]* has held that the department cannot confirm a demand solely on the basis of third-party evidence without any opportunity being afforded to the manufacturer to cross-examine such evidence.

M/s. Meera Pipes Pvt. Ltd. ("**the Appellant**") is engaged in the manufacture of SS Pipes falling under Chapter 73 of the Central Excise Tariff Act, 1985. They were availing the benefit to Small Scale Industry ("**SSI**") of exemption from duty and obtaining Central Excise Registration as it was claimed that the clearance value does not exceed the threshold limit under the exemption notification. The department had raised a demand for excise duty finding that the Appellant had exceeded the exemption limit due to which the Appellant is not eligible for SSI Exemption. The decision was based on third-party evidence following a search conducted on the premises of the Appellant.

The Appellant raised the contention that the evidence relied for raising the demand is third-party evidence and no opportunity has been given to the Appellant to cross examine the said third-party evidence.

The CESTAT accepted the contention and observed that in absence of cross-examination of witnesses whose statements were recorded under Section 14 of the Central Excise Act, 1944 ("**the Act**"), unless and until those witnesses are cross-examined, the statements given by them are not admissible evidence for deciding a case. The CESTAT further opined that all the evidence is third parties' evidence and no cross-examination in terms of Section 9D of the Act was allowed off the witnesses, therefore, such evidence could not have been used for confirming the demand. Accordingly, the CESTAT allowed the appeal.

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