IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75472 of 2019

(Arising out of Order-in-Appeal No.137/KOL-V/2018 dated 26.10.2018 passed by Commissioner of CGST & CX, Appeal-I Commissionerate, Kolkata.)

M/s. Elmech Engineers
(4, Tarpan Ghan Road,
Kolkata-700053.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate
.....Respondent
(GST Bhawan, 8th Floor,
180, Shantipally, Rajdanga Main Road,
Kolkata-700107.)

<u>APPEARANCE</u>

Shri B.N.Chattopadhyay, Consultant for the Appellant (s)
Shri H.S. Abedin, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

<u>FINAL ORDER NO. 76850/2019</u>

DATE OF HEARING : 3 July 2019
DATE OF DECISION : 3 July 2019

P.K.CHOUDHARY :

The facts of the case in brief are that the appellant is a manufacturer of Diesel Generating sets, the main components of which are Alternators and Diesel Engines. Such components are procured by the appellant from reputed concerns like M/s.Crompton Greaves and M/s.Kirloskar Oil Engines Ltd.. The manufactured DG sets are supplied mostly to the Government departments. The DG sets manufactured according to the drawings, designs and specifications provided by the customers. The appellant availed Cenvat credit on the components and materials used in the manufacture of DG sets. The Central Excise officers visited the factory of the appellant on 16.10.2006 to 27.10.2006 and verified the stock of raw materials and finished DG sets manufactured in their factory. Books of accounts including RG-23A part-I and part-II were also examined. Eight numbers of DG sets in the work-in-process conditions were found. On examination of the books of accounts for the period 01.04.2003 to 20.10.2006, it was alleged that there was shortage of 99 numbers of diesel engines and 167 numbers of alternators. Accordingly the credit of Rs.28,79,250/- on such components of DG sets was alleged to have been taken irregularly. Show cause notice dated 07.12.2007 was issued for disallowance and recovery of Cenvat credit amounting to Rs.29,22,195/-.

2. This is the second round of litigation before the Tribunal. The adjudicating authority in the *de novo* proceedings confirmed the entire demand all over again. The lower appellate authority upheld the *de novo* adjudication and rejected the appeal before him. Hence the present appeal before the Tribunal.

3. The learned Consultant appearing on behalf of the appellant submitted that the computation of alleged shortage of alternators and diesel engines were not properly done by the departmental officers. He further submitted that the opening balance taken as 11 numbers of diesel engines and 28 number of diesel alternators as on 01.04.2003 were not proper and correct. The correct opening balance was 61 and 104 numbers respectively. During the period from 2003-04 to 23.06.2010 there were certain errors in respect of receipts and clearances of diesel engines and alternators which were pointed out in the tables in their reply to the show cause notice in respect of the impugned period. Relevant documents were also placed before the authorities below relating to clearance of the diesel engines and alternators as such from their factory on payment of duty and towards purchase of alternators and DG sets. The learned Consultant contended that every diesel engine and alternator had got a serial number for identification and such numbers are available in the Central Excise

invoices on the basis of which credit has been availed by them. The appellants have also mentioned such serial numbers of diesel engines and alternators in their invoices towards clearance of DG sets and/or clearance of diesel engines or alternators as such from their factory. The learned Consultant vehemently argued that all these facts could be ascertained correctly from such documents and submitted a statement showing the numbers of diesel engines and alternators with serial numbers which was also submitted along with their reply to the show cause notice. It is the submission of the learned Consultant that their goods are mostly sold to the Government concerns and question of removal of any goods without being covered by Central Excise invoices does not arise. The learned Consultant further submitted that the lower appellate authority in the impugned order has not considered the Chartered Accountant certificate submitted by the appellant which was submitted on his instruction only. It is the case of the appellant that there was no physical verification of stock of diesel engines and alternators as stood on 23.10.2006. It is merely on the basis of alleged computation of receipts and clearance of such equipments in and from their factory.

4. Learned Authorized Representative appearing on behalf of the respondent Revenue justified the impugned order.

5. Heard both sides and perused the appeal records.

6. From the perusal of records I find that all the diesel engines and alternators are having serial numbers incorporated by the manufacturers and suppliers. They had also shown the serial numbers of the diesel engines and alternators at the time of clearance of the diesel generator sets in their Central Excise invoices. Hence, it is not difficult to co-relate such documents with the receipts and clearance of diesel engines and alternators and diesel generator sets.

7. The learned adjudicating authority in his Order-in-Original did not consider the submissions made by the appellant in his reply to the show cause notice and also the documents submitted by them along with their reply and also the submissions made at the time of *de novo*

adjudication proceeding. Hence, the order of the learned adjudicating authority was not a speaking order and such order is not maintainable under the statute.

8. The learned Commissioner(Appeals) also did not consider the submissions made in their appeal petition and also did not consider the documents submitted along with their appeal petition. His order also is not proper and valid. He has not also considered the Chartered Accountant's certificate which was filed as per his instructions at the time of personal hearing.

9. In view of the above discussion I observe that the appellants should be given one more opportunity to explain their case before the lower authorities since there have been violations of principles of natural justice on the earlier occasions. Accordingly the appeal is remanded to the adjudicating authority to consider the submissions of the appellant on the basis of the supporting documents, statutory registers and the Chartered Accountant's certificate. Accordingly the impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority.

(Operative part of the order was pronounced in the open Court.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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