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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75730 of 2019

(Arising out of Order-in-Appeal No.164/SLG-CGST/2018 dated 30.11.2018 passed by Commissioner of CGST & Central Excise, Siliguri)

M/s Macneill Engineering Ltd

(Konchowki, Bhasa, Diamond Harbour Road, P.O.-Bishnupur, 24 Parganas(S)-743 503)

Appellant

VERSUS

Commr. of CGST & Central Excise, Kolkata South

(180, Rajdanga Main Road, Shantipally, Kolkata- 700 107)

Respondent

APPEARANCE

None for the appellant
Mr. S.K.Jha, Authorized Representative, for the respondent

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. -77100/2025

Date of Hearing : 30.07.2025
Date of Decision : 30.07.2025

Per : R. MURALIDHAR :

The appellant is a manufacturer of Battery & Diesel operated Fork-Lift Trucks, Platform Trucks etc. On the ground that in respect of certain semi-assembled and assembled goods produced by the appellant from their vendors no excise duty was paid, a Show Cause Notice was issued on 12.05.2011 for the period 2006-07 to 2008-2009. After due process, the adjudicating authority confirmed the demand. On appeal, the Commissioner(A) dismissed the appeal filed by the appellant. Being aggrieved, the appellant is before the Tribunal.

2. The learned counsel appearing on behalf of the appellant submits that appellants were also trading in respect of several parts of Fork-Lift and other finished goods manufactured by them. In some cases,

clearances were made after sub-assembling various parts received from their vendors. On such assembling goods being cleared, the appellant has found that they required to pay excise duty and they have paid the same and shown the details in the ER-1 for the month of November 2009. In respect of other cleared goods which are procured from various vendors, no manufacturing activity has taken place in terms of Section 2(f) of the Central Excise Act 1944. Therefore, they are not required to pay any excise duty on such clearances.

3. The learned counsel produced a copy of the Chartered Accountant’s certificate dated 05.02.2019 stating that 520 such items were cleared by them which would be classifiable as traded goods, on which no Excise Duty is required to be paid.

4. In view of these submissions the learned counsel prays that the appeal be allowed.

5. The learned AR appearing on behalf of the Revenue submits that the Chartered Accountant’s certificate being produced now is dated 05.02.2019 and was not before the lower authority. Further, the investigation was taken up on 05.02.2008 and the officials have visited the factory premises on 10.09.2009. Only after this, the appellant has paid part of the amount and reflected the same in ER-1 for the month of November 2009. He submits that as to whether the Central Excise duty of Rs. 12,04,925/- pertains to trading goods or not, the same is required to be verified by the Revenue officials.

6. Heard both sides.

7. I find that the appellant is claiming that major portion of the demand is covered by their clearance on goods on trading basis. Towards this, they have produced a Chartered Account’s certificate. As rightly pointed out by the learned AR, the lower authorities did not have this certificate before them while deciding the issue. Therefore, I find this is to be a fit case to be remanded to adjudicating authority.

8. The appellant is directed to produce a copy of the Chartered Account's certificate with all the backup papers towards their claim before the adjudicating authority. He should follow the principles of natural justice and pass a considered decision within three months from the date of receipt of this order.

9. The appeal stands disposed off thus.

(Dictated and Pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

SB