IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. ST/86322/2015
ST/CO-91123/2015
(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/288-14-15 dt. 23.2.2015 passed by the Commissioner (Appeals) Central Excise & Customs, Nagpur)

Commissioner of Central Excise, Nagpur : **Appellant**

VS

M/s. R.D. Cranes : **Respondent**

Appearance

Shri Dilip Shinde Asstt. Commr. A.R.) for Revenue

Shri D.H. Nadkarni, Advocate for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of hearing :31/08/2018
Date of decision:31/08/2018

ORDER NO. A/87274/2018

Per : Dr. D.M. Misra

Heard both sides.

2. This is an appeal filed by the Revenue against order-in-appeal No. NGP/EXCUS/000/APP/288-14-15 dt. 23.2.2015 passed by the Commissioner (Appeals) Central Excise & Customs, Nagpur. In the impugned order, the Learned Commissioner (Appeals) even though

recorded that the respondent has not filed any reply to the show cause notice nor appeared for the personal hearing, before the adjudicating authority partially allowed the appeal. Aggrieved by the said order, the present appeal is filed by the Revenue, which is the subject matter of dispute before this Tribunal.

3. The Revenue has raised many grounds in the grounds of appeal, but choose to confine it prayer only to one aspect of the order, that is, admissibility of cum-tax benefit to the appellant. We find from the order that the conclusion has been reached by the Learned Commissioner (Appeals), on the evidences produced at the time of hearing before him, which have not been scrutinized and examined by the adjudicating authority, so as to ascertain it correctness or otherwise.

3. Learned Advocate for the respondent fairly submits that no reply to the show cause notice was filed by the respondent, also, they had not attended the personal hearing before the adjudicating authority as four consecutive dates were given in the same hearing notice. He has pleaded that the matter may be remanded to the adjudicating authority, so as to file their reply to the show cause notice and to avail the opportunity of personal hearing.

4. Learned Authorised Representative for the Revenue has no objection.

5. In the ordinary circumstances, we would not have acceded to such a request, but since the Learned Commissioner (Appeals) has recorded the findings on various issues raised and the evidences produced for the first time before him, keeping in view the interest of justice, we are of the opinion that the evidences need to be scrutinized by the original authority and the respondent be given due opportunity to defend their case by submitting their defense against the allegations levelled in the show cause notice.

6. In the result, the impugned order is set aside and the matter is remanded back to the adjudicating authority to decide the issue afresh after affording an opportunity of personal hearing to the respondent. Learned Authorised Representative for the Respondent undertakes to file a proper reply to the show cause notice within four weeks from the date of communication of this order and participate in the adjudication proceeding without seeking unwarranted and unnecessary adjournments. In any case, it is expected that the *denovo* proceeding should complete within three months from the date of communication of this order. Revenue's appeal is allowed by way of remand. Cross-objection also disposed.

(Dictated and pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

SM.