IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

C/00114/2010

[arising out of Order-in-Appeal C.Cus. No.1387,1388/2009, dated 18.11.2009 passed by the Commissioner of Customs (Appeals), Chennai]

COMMISSIONER OF CUSTOMS (AIRPORT), CHENNAI APPELLANT

Versus

M/s. REDINGTON INDIA LTD. RESPONDENT

Appearance:

For the Appellant Shri K.P. Muralidharan, AC (AR)
For the Respondent Shri P. Saravanan, Adv.

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision **29-09-2017**

FINAL ORDER NO. 42392/2017

Per Bench:

The facts of the case are that M/s. Redington India Ltd., [hereinafter referred to as "RIL"], the respondent herein filed eight bills of entry for clearance of digital video discs containing interactive video games, on merit rate of duty without claiming benefit of Notification No.6/2006, dated 01.03.2006. The importer filed an appeal with the Commissioner (Appeals) against the assessment order, who allowed the appeal and extended the benefit of the said notification, for which the bill of entry was reassessed. Subsequently, the respondent-assessee filed a refund claim for Rs.80,82,400/-, which was sanctioned by the Assistant Commissioner vide Order dated

18.05.2007. Department preferred an appeal before Commissioner (Appeals) on the following grounds:-

(i) The provisions of section 28C of the Customs Act, 1962, stipulates that "every person, who is liable to pay duty on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice and other like documents, the amount of such duty, which will form part of the price at which such goods are to be sold.;

(ii) Further, section 28D of Customs Act, 1962 presumes that the duty paid on any goods is deemed to have passed on to the buyer, unless contrary is provided;

(iii) In the instant case, there is no mention of scrutiny of the sale invoice in the Order-in-Original in respect of section 28C.

2. The Commissioner (Appeals) vide the impugned order, dated 18.11.2009 found the appeal legally lacking, on the ground that the appeal was drafted subsequent to review order; that review order was mechanically issued without application of mind; hence, the review order falls foul of the requirements of sub-section (2) of section 129D of the Customs Act, 1962. For these reasons, lower appellate authority rejected both the appeals as *ab initio* void. Aggrieved, department is before this forum.

3. Today, when the matter came up for hearing, on behalf of the department, the Ld. AR Shri B. Balamurugan, reiterated the grounds of appeal.

4. On the other hand, the learned advocate Shri P. Saravanan supports the impugned order and made oral submissions, which are broadly summarised as under:-

(i) For filing an appeal before the Commissioner (Appeals), there has to be direction by the competent Commissioner of Customs to any officer subordinate to him and it should be in the form of a judicial order, containing grounds of appeal.

(ii) In the grounds of appeal filed by the department, it is stated that the "appeal prepared in Form CA-2 was submitted before Commissioner (AIR). Commissioner (AIR) once again approved the same on 23.08.2007 in the note sheet." This is an incorrect fact since as per the note sheet in page nos.21 and 22 of the appeal, there is no direction given by the Commissioner on 23.082007 nor has he approved any grounds of appeal on that date.

(iii) The Form CA-2 has not been put before Commissioner on 23.08.2007. Hence, the grounds of appeal come into vogue only when it is signed by the Commissioner.

5. Heard both sides and we have gone through the facts.

6. The learned advocate has interpreted the provisions of sub-section (2) of section 129D of the Custom Act, 1962 to contend that the directions given by the Commissioner to file an appeal is a judicial order and should contain the grounds of appeal, which should have been approved at that stage itself. He further submits that as per the note sheet there is no evidence that this has been done. In our view, these protestations of the learned advocate are misconceived. The requirement as per sub-section (2) of section 129D *ibid* is that the Commissioner should have satisfied himself that a particular decision

or order requires to be appealed against, with the Commissioner (Appeals), on certain points. From a perusal of the note sheet found in page nos.21 and 22, it clearly emerges that points and reasons for considering the appeal have been elucidated in the notings. These notings have also brought out the legal inadequacies of the order of original authority, as perceived by the officer subordinate to the Commissioner. All these aspects have been gone through and agreed with by the Commissioner and only thereafter has he directed filing of the appeal. Based on these directions, appeal papers for filing have been put up subsequently. Ostensibly, the appeal papers would in the form of CA-2, which is the format for filing of departmental appeals before the Commissioner (Appeals) and which format is also prescribed for filing the grounds of appeal. Accordingly, the appeal papers containing these grounds of appeal and also authorization referred to in the impugned order was approved by the Commissioner on 10.09.2007. It is not the dispute of the respondent that the grounds of appeal were different from the points or reasoning given in the file note sheet. In our considered opinion, therefore, the drafting of the appeal papers in the form CA2 required is just a procedure to implement the directions given by the Commissioner for filing the appeal. The legal requirement embedded in sub-section (2) of section 129D *ibid* has very much been followed and complied with. In consequence, the impugned order of the lower appellate authority finding fault with the review orders and also the finding that the grounds of appeal have been approved subsequent to review order cannot sustain and will require to be set aside, which we hereby do. The matter is remanded back to the lower appellate authority to

Customs, Excise & Service Tax Appellate Tribunal consider the appeal filed by the department afresh on merits. Appeal is allowed by way of remand. Needless to say, in such de novo proceedings, both the parties, would be given sufficient opportunity to present their case, including submission of additional evidences, if any.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

ksr
25-10-2017

प्रमाणित प्रति/Certified True Copy

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सहायक पंजीकार/Asst. Registrar
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चेन्नै/CHENNAI

Customs, Excise & Service Tax Appellate Tribunal