IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

<u>COURT-IV</u>

Date of Hearing/Decision : **21.02.2017**

Appeal Nos. E/3149/2009

[Arising out of the Order in Appeal No. OIA- 174-175/CE/DLH/2009 dated 14.09.2009 passed by Commissioner (Appeals), New Delhi]

Commissioner of Central Excise & S.T., New Delhi … Appellant

Vs.

M/s. Siddhartha Optical Disc. Pvt. Limited … Respondent

AND

Appeal Nos. E/3283-3284/2009

M/s. Siddhartha Optical Disc. Pvt. Limited … Appellants
Shri Surendra Wadhwa, Director

Vs.

Commissioner of Central Excise & S.T., New Delhi … Respondents

<u>Appearance</u>:

Rep. by - Shri G.R. Singh, DR for the applicants
Rep. by - None for the respondent

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. <u>51905-51907/2017-DB</u>

<u>Per Ashok Jindal</u>

Both sides are in appeal.

2. The brief facts of the case are that, on 19.03.2007 a search was conducted at the manufacturing premises of the assessee. Shri Surendra Wadhwa, Director, was present during search. It was found that seven machines were in

operation for manufacturing of CD/VCD/Audio-CD, CD-ROM. Shri Surendra Wadhwa stated that they are manufacturing/ replicating VCD or CD of educational nature and the same are being exempted under Notification No. 6/2006-CE dated 01.03.2006 and therefore, they are not paying duty. It was further pointed out that manufacturing/ replicating of CD ROM were not of Educational nature and therefore they are not eligible for the benefit of notification and has voluntarily agreed to pay sum of Rs. 3,25,000/-. Thereafter, a Panchnama was drawn and show cause notice was issued to the respondent-assessee to demand duty on CD-ROMs cleared by the assessee. Show cause notice was adjudicated and demand of duty was confirmed along with interest and penalty on both, the assessee and the Director. The said order of ld. Commissioner was appealed before the Commissioner (Appeals), who reduced the penalty on the main assessee to 25% of the duty. Aggrieved by the said order, Revenue is in appeal against reduction of penalty. The assessees are in appeal against the confirmation of duty and imposing penalties.

3. Shri Naveen Mullick, ld. Counsel for the assessees appeared before us and submitted that, as per Notification No. 06/2006-CE dated 01.3.2006, at serial No. 26, the CD-ROMs containing books of an educational nature, journal, periodicals (magazines) or news paper are exempted from payment of duty. Admittedly, no samples of goods (CD-ROMs) in question were drawn. During the course of investigation, Shri Surendra Wadhwa, Director has categorically submitted that they are manufacturing/ replicating CD-ROMs of educational

nature. However, it was presumed by the authority below that the CD-ROMs are containing Video Games, which is not correct. He further submitted that the Revenue is relying on the details given by the assessee with regard to non-educational CD-ROMs. To that effect, he submits that CD-ROMs containing journal, periodicals (magazines) or news paper are also entitled for benefit under the said notification. As no sample has been drawn and the VCD, CD-ROMs with contents of educational/entertainment/games etc. are covered under journal, periodicals (magazines) or news paper. Therefore, in these circumstances, the appellant is entitled for the benefit of exemption Notification No. 6/2006-CE dated 01.3.2006. With regard to the Revenue's appeal, he submits that, as the duty, interest and 25% of the penalty have been paid by the assessee, the same is required to be dismissed.

4. On the other hand, Shri G.R. Singh, ld. DR for the Revenue submits that it is an admitted position that appellants were manufacturing/ replicating VCD, CD-ROMs containing books of educational nature as well as non-educational nature which is in the form of Video Games. Therefore, the appellant is not entitled for the benefit of Notification No. 6/2006-CE dated 01.03.2006. However, he fairly agrees that no samples were drawn by the department during investigation.

5. Heard both sides. On careful consideration of the submissions made by both sides, we find that this is an admitted position that no samples were drawn

to find out the contents of the VCD, CD-ROMs in question. The assessee has admitted that they are manufacturing/ replicating VCD, CD-ROMs on educational material. They are of educational nature as well as non-educational nature. The Revenue has presumed that no-educational nature means 'Video Games' and consequently held that they are not covered by the Notification No. 06/2006-CE dated 01.03.2006. We have seen that in the notification, the assessee is entitled for exemption on CD-ROMs containing books of education nature, journal, periodicals (magazines) or news paper but the Revenue has presumed that CD-ROMs which are of not educational nature are of 'Video Games' and not covered by the said notification. In the absence of any evidence on record that non-educational CD-ROMs containing journal, periodicals (magazines) or news paper are CD-ROMs of 'Video Games', the benefit of doubt goes to the assessee. In these circumstances, we do not find merit in the impugned order demanding duty along with interest and imposing penalty on the assessees and the same is set-aside.

6. In view of the above, the appeals filed by both the assesses are allowed and the appeal filed by the Revenue is dismissed.

[Order dictated & pronounced in open court]

(**V. Padmanabhan**)
Member (Technical)

(**Ashok Jindal**)
Member (Judicial)

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