**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. III**

**DATE OF HEARING : 19/06/2017.**
**DATE OF DECISION : 19/06/2017.**

**Excise ROA Application No. 50133 of 2017 in Appeal No. 3425 of 2010**

[Arising out of the Order-in-Appeal No. 338-CE/APPL/DLH/2008 dated 22/07/2010 passed by The Commissioner (Appeals), Customs & Central Excise, New Delhi.]

M/s Salora International Limited — Appellant

Versus

CCE, Delhi – II — Respondent

**Appearance**

Shri Jitender Singh, Advocate – for the appellant.

Shri R.K. Mishra, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 54104/2017 Dated : 19/06/2017

**Per. B. Ravichandran :-**

The miscellaneous application is for restoration of appeal, which was dismissed vide final order No. 54635 of 2016 dated 28/10/2016. The applicant submitted that they have not received the notice of hearing and considering that they have a strong case on merits, request for recall of the final order, which was passed dismissing the appeal on default.

2. Having considered the miscellaneous application, we find it fit to recall the said final order and restore the appeal. The miscellaneous application (ROA) is allowed. With the consent of both the parties, considering the appeal is of 2010, we have taken up the appeal itself for final decision.

3. The learned Counsel for the appellant submitted that this is a second round of litigation before the Tribunal. On the first occasion, the Tribunal specifically directed, vide order dated 10/01/2007, the Original Authority to verify the data submitted by the appellant with reference to their claim that no credit has been taken on the input going into the production of black and white TV sets. The learned Counsel mentioned that despite of specific direction, the Original Authority in his order dated 31/03/2008 virtually reproduced, para by para, the findings recorded in his earlier order dated 30/03/2005. On appeal, the Commissioner (Appeals), instead of examining the matter in line with the directions of the Tribunal, upheld the original order and he also passed finding on merits of the claim of the appellant. It is submitted on behalf of the appellant that the document submitted by the appellant were not examined and commented upon by the lower authorities, before proceedings with the merits and legal issues of the case.

4. The learned AR submitted that the impugned order specifically records that the appellants did not produce required documents, like RG-23A Pt. I and he also relied on the comments submitted by the jurisdictional officer dated 20/10/2012.

5. We have heard both the sides and perused the appeal records. First of all, we note that the remand direction of the Tribunal has not been carried out by the Original Authority. Unfortunately, the findings recorded are virtual reproduction of earlier original order without any comments on what type of examination has been carried out and which type of documents are found wanting during such verification. The said order was upheld by the impugned order, again without specific examination of how the facts could not be substantiated by the appellant and the documents submitted are not sufficient and specific to the issue in hand. We note that in the comments given by the jurisdictional officer on 30/10/2012, certain remarks on the non-availability of the documents have been specifically made. The learned Counsel for the appellant submitted that they are not told about any lack of document or incompleteness in the document, during the proceedings or even in the denovo original order. Since, the denovo order was virtual reproduction of the original order, they expected that the Commissioner (Appeals) will ask for first verification of the documents or to record specific finding of the availability of the documents, in line with the remand order of the Tribunal. Instead of that, the Commissioner

(Appeals) went ahead and made certain observation regarding merit of the case.

6. On careful consideration of the appeal records and the submissions made by the appellant, we find that in the absence of specific and categorical finding on the facts of the case, especially noting that the Original Authority has virtually reproduced the earlier finding without giving due attention to the remand direction of the Tribunal, we note that we have no alternative except to remand the matter again to the Original Authority. We make it clear that the Original Authority should examine the documents submitted by the appellant and any additional details required may also be called for and adequate opportunity may be given to the appellant to submit their side of the case. After due examination of all the documents and submissions of the appellant, the Original Authority should record his findings on facts and thereafter on merits of the case. Since, the issue is very old, we advice the Original Authority to complete the process within three months and issue order. The appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

**(S.K. Mohanty)**
**Member (Judicial)**

**(B. Ravichandran)**
**Member (Technical)**

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