CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH, MUMBAI
COURT I

Appeal No.E/137-140/2011

Arising out of OIA No.SB(120 to 123) M.V./2010, dt.21.10.19, passed by CCE (A), Mumbai

M/s Sanjog Enterprises Pvt. Ltd
M/s Pen Audio Pvt. Ltd
Shri Bhagwati Prasad Agarwal
Shri Rajesh Agarwal **... Appellants**

Vs.

CCE Mumbai-V **... Respondent**

Appearance:
For Appellants: Shri J.H. Motwani, Advocate
For Respondent: Shri Anil Choudhary, DC (A.R.)

CORAM:
HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 18.03.2019

Date of Decision: 18.03.2019

Order No.A/85555-85558/2019

Heard both sides. These appeals are filed against OIA No.SB(120 to 123) M.V./2010, dt.21.10.2019, passed by CCE (A), Mumbai.

2. Briefly stated the facts of the case are that the Appellants herein are manufacturer of pre-recorded audio cassettes on job work basis for M/s Pen Audio Pvt. Ltd. Since the value of the master copy i.e. Digital Audio Tape (DAT) was not included in the assessable value of pre-recorded cassette, demand notices were issued to the Appellant, M/s Sanjog Enterprises for recovery of

the differential duty amounting to Rs.6,64,937.20 for the period from October 1997 to May 1999. On adjudication, the demand was confirmed with interest and penalty and personal penalty imposed on other Appellants. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn partly allowed their appeal. Revenue filed an appeal before this Tribunal challenging the said OIA. This Tribunal vide Order No.A/428/WZB/06/C-II/63, dt.27.02.2006 remanded the matter to the Adjudicating authority to recalculate the assessable value of pre-recorded cassettes in terms of Board's Circular No.619/10/2002-CX, dt.19.02.2002. The same appeal was again listed wrongly along with three other appeals before this Tribunal and this Tribunal remanded the matter to the Adjudicating authority for re-determination of the assessable value keeping all issues open. Now, the de-novo order is challenged before this Tribunal.

3. The learned Advocate Shri J.H. Motwani for the Appellant submits that even though before the Adjudicating authority they have submitted the balance sheets of the respective years of M/s Pen Audio Pvt. Ltd, however, the Adjudicating authority, without taking into account the same, confirmed the demand with interest and penalty. It is his contention that even the learned Commissioner (Appeals) also did not take cognizance of the said documents and dismissed their appeal. He submits that the issue is now no more res integra and is covered by the judgment of Hon'ble Supreme Court in the case of K.R.C.D. (I) Pvt. Ltd Vs

CCE Mumbai – 2015 (319) ELT 364 (SC). He submits that the matter be remanded to the Adjudicating authority to consider all aspects of the case and decide the issue afresh in the light of the judgment of Hon'ble Supreme Court in the case of K.R.C.D. (I) Pvt. Ltd.

4. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals). He has no objection in remanding the case to the Adjudicating authority.

5. We have carefully considered the submissions advanced at length by both sides. There is no dispute about the fact that royalty charges have been paid by M/s Pen Audio Pvt. Ltd to various artists, which ought to be included in the assessable value of pre-recorded cassettes manufactured on job work basis by the Appellant. It is the claim of the Appellant that even though they placed on record the balance sheet of Pen Audio Pvt. Ltd for calculation of the assessable value on the basis of the royalty charges paid by M/s Pen Audio Pvt. Ltd., but the same was not considered and the demand was confirmed. We find that since the issue has been settled by the Hon'ble Supreme Court in K.R.C.D. (I) Pvt. Ltd case, therefore, it is prudent to remand the matter to the Adjudicating authority taking into consideration the principle of law laid down by Hon'ble Supreme Court in the case of K.R.C.D. (I) Pvt. Ltd to decide the matter afresh. All issues are kept open. Appellants are at liberty to produce all relevant evidences in support of their case.

6. Appeals allowed by way of remand to the Adjudicating authority.

(P. Anjani Kumar)
Member (Technical)

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

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