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

Appeal No. E/1115/2011

(Arising out of Order-in-Appeal No. PKS/567/BEL/2010 dated 31.3.2011 passed by the Commissioner of Central Excise (Appeals), Belapur).

M/s Sagarika Acoustronics Pvt. Ltd.	Appellant

Vs.

Commissioner of Central Excise, Belapur	Respondent

Appearance:

Shri Mayur Shroff, Advocate	for Appellant
Shri N.N. Prabhudesai, Supdt. (AR)	for Respondent

CORAM:

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

Date of Hearing: 15.03.2019

Date of Decision: 15.03.2019

ORDER NO. **A/85565 / 2019**

Per: Dr. D.M. Misra

Heard both sides.

2 This is an appeal filed against Order-in-Appeal No. PKS/567/BEL/2010 dated 31.3.2011 passed by the Commissioner of Central Excise (Appeals), Belapur.

3. This is the second round of litigation before this Tribunal. While analyzing the issue, that is, whether various expenses incurred by the appellant in production of the Pre Recorded Cassettes (PRC) are to be included in the assessable value or otherwise, this Tribunal vide Order No. A/129/WZB/2006/C-I/EB dated 4.1.2006 remanded the matter to the adjudicating authority observing as follows: -

> *"4. We find that in the Tribunal's decision cited supra, it has been held that the value of material such as master tape, inlay cards etc. supplied free of cost to the assessee by its customer is required to be included in the assessable value of pre-recorded audio cassettes. However, it has also been held that the demand based upon the wholesale price of the music companies cannot be sustained and that the demand will have to be reworked out by first obtaining the wholesale price of the music companies and allowing permissible deduction as set out in CBEC Circular No. 619/10/2002-CX dated 19.2.2002. Following the ratio of the above order, we set aside the impugned order in this case and remand the case to the adjudicating authority for re-quantification of the demand in the light of the Tribunal's order cited supra."*

4. Pursuant to the said remand orders, the adjudicating authority has arrived the duty liability as Rs.76,62,332/- being the differential duty payable on finalization of the assessment under Rule 9B of erstwhile Central Excise Rule, 1944. The adjudicating authority has arrived at the said amount observing that necessary supporting evidences/documents, including CA certificate was not produced by the appellant, therefore, the assessment was finalized on the basis of available records. Aggrieved by the said order, the appellant filed an appeal before the learned Commissioner (Appeals) making out a case that the relevant balance-sheet of the Music Company were not supplied to them. Consequently, the said balance-sheets were procured and supplied to the appellant in the proceedings before the learned Commissioner (Appeals). Computation of the exact liability thereafter submitted by the appellant, however, the same

has not been accepted by the learned Commissioner (Appeals) observing that they have not submitted supporting documents along with computation sheet.

5. Learned Advocate for the appellant submits that even though they have worked out, the royalty charges from the respective documents, however, the other cost of the cassettes could not be submitted. He submits that they can provide the said cost and requested to remand the matter to the appropriate authority.

6. Ld. AR for the Revenue has no objection in remanding the matter, but he submits that a time frame may be fixed.

7. We have carefully considered the submissions advanced by both sides. We find that the issue related to includability of cost of the free issue materials, certain expenses etc. in arriving at the value of pre-recorded cassettes has been settled by the Hon'ble Supreme Court in *K.R.C.D.(I) Pvt. Ltd. Vs. CCE, Mumbai – 2015 (319) ELT 364 (SC),* considering various aspects in loading of the value of the pre-recorded audio cassettes and laid down the principle in this regard. Therefore, at this stage, it is prudent to remand the matter to the adjudicating authority to re-compute the assessable value in the light of Hon'ble Supreme Court's judgment in K.R.C.D.(I) Pvt. Ltd. (supra); the appellants are also directed to provide the cost of various free issue materials that had been directed by this Tribunal in its earlier order dated 4.1.2006 to be included in the assessable value of the goods. The

impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority.

8. At this stage, ld AR for the Revenue submits that a time limit be prescribed for the *de novo* proceedings. Learned Advocate has no objection. As far as practicable, the de novo proceeding be completed within a period of four months from the date of communication of the order.

9. Appeal is allowed by way of remand.

(Dictated and pronounced in Court)

(P. Anjani Kumar)	**(Dr. D.M. Misra)**
Member (Technical)	**Member (Judicial)**

Sinha