# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 1048 of 2011**

(Arising out of Order-in-Original No. 09/M-I/2011 dated 22.03.2011 passed by the Commissioner of Central Excise, Mumbai-I).

**M/s KRCD (I) Pvt. Ltd. .... Appellant**

Versus

**Commissioner of Central Excise, Mumbai-I .... Respondent**

Appearance:

Ms. Anjali Hirawat, Advocate for the Appellant

Shri N.N. Prabhudesai, Supdt., Authorized Representative for the Respondent

**CORAM:**

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

**FINAL ORDER NO.**

Date of Hearing: 19.02.2019

Date of Decision: 19.02.2019

***Per: Dr. D.M. Misra***

Heard both sides.

2 This is an appeal filed against Order-in-Original No. 09/M-I/2011 dated 22.03.2011 passed by the Commissioner of Central Excise, Mumbai-I

3. Briefly stated the facts of the case are that the appellants are engaged in the job work activity of duplicating CD's from a master CD issued to the appellants by the distributors, who had copyrights in the content of the CD. The adjudicating authority has arrived at 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 in determining the assessable value of PRC, therefore, the assessment was finalized on the basis of available evidences on record. 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, who paid the royalty charge 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.

4. Learned Advocate for the appellant submits that even though they have worked out, the royalty charges from the respective documents, however, the cost of the cassettes and

other free issue materials could not be submitted by the Appellant. He submits that they are now in a position to provide the said data and requested to remand the matter to the adjudicating authority.

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

6. 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. The issue has now been settled by the Hon'ble Supreme Court in *K.R.C.D.(I) Pvt. Ltd. Vs. CCE, Mumbai – 2015 (319) ELT 364 (SC).* 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 as observed 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.

7. 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.

8. Appeal is allowed by way of remand.

(Operative portion of the order pronounced in court)

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

**(P. Anjani Kumar)**
**Member (Technical)**

Sinha