

**2014 (2) ECS (282) (Tri - Del.)**

In the Customs, Excise & Service Tax Appellate Tribunal

West Block No. 2, R.K. Puram, New Delhi-110066

**CC, NEW DELHI**

**VS.**

**M/S. YKK (INDIA) PVT. LTD.**

**Date of Hearing: 27.03.2014**

**Date of Decision: 27.03.2014**

Customs Appeal No. C/590/2008-CU [DB]

[Arising out of Order-in-Appeal No. CC (A) CUS/I&G/D-I/198/08 dated 19.05.2008 passed by the Commissioner of Customs (Appeal), Delhi I]

Appearance:-

Shri Govind Dixit, DR & Shri Sanjay Jain, DR.,

for the appellant

None

for the respondent

**CORAM-**

Hon'ble Mr. D.N. Panda, Judicial Member

Hon'ble Mr. Manmohan Singh, Technical Member

*Final Order No. 51494/2014 dated: 27.03.2014*

**Royalty is computable on the invoice price appearing on the sale of all products sold by licensee during the royalty computation period. This part of the understanding by the parties is enough to say that case is covered by Rule 9(1) (C) of the Customs Valuation Rules, 1998. Ld. Commissioner (Appeals) misconstrued the agreement and decided the case under mistake of fact. (Para 2)**

**Per: D.N. PANDA**

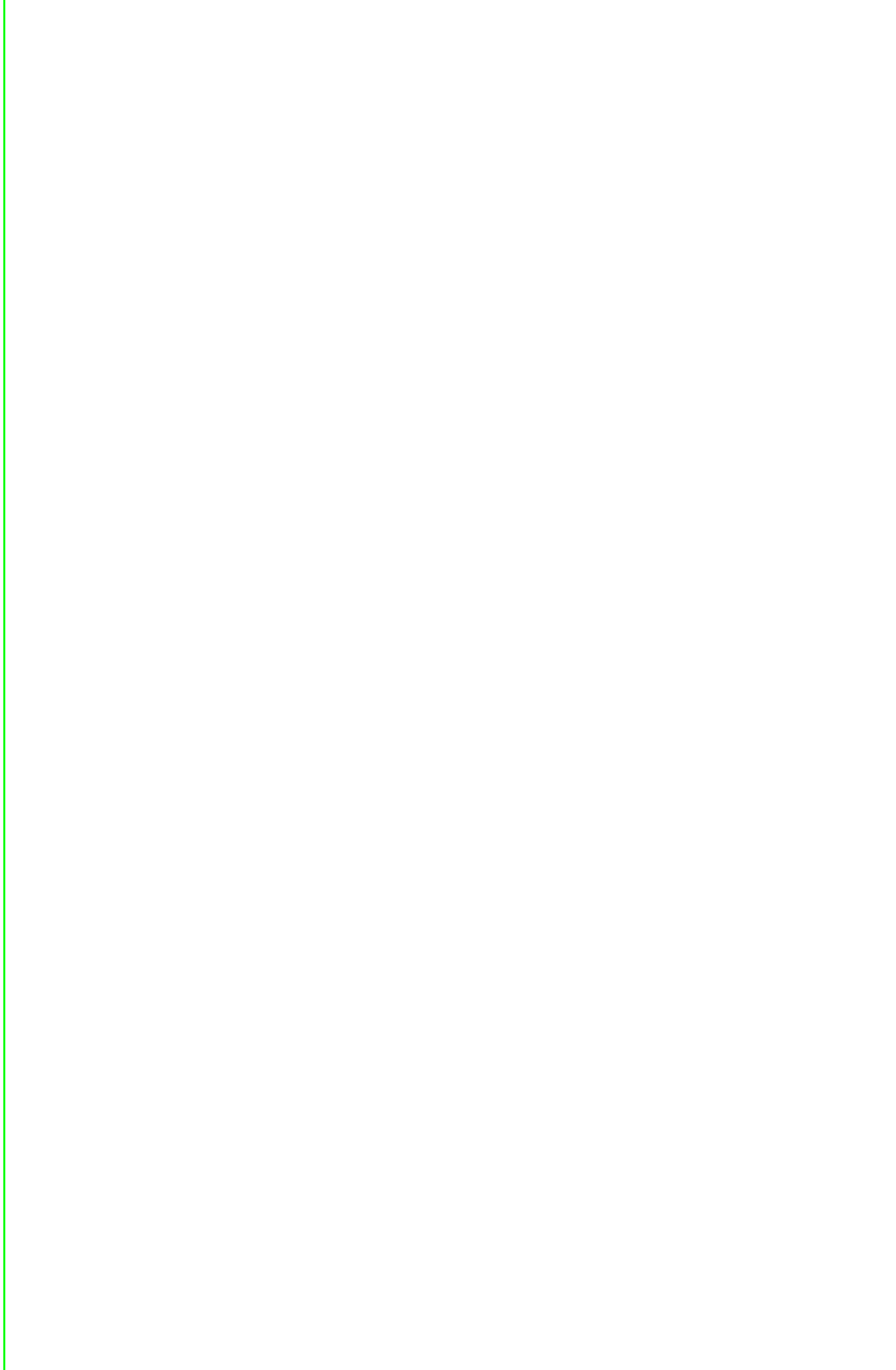
None present for the respondent nor there is any adjournment application.

1. The question that came up in this appeal is whether invoice price appearing on the sale bill is basis for payment of the royalty paid by the respondent.
2. In terms of Article 2.1 of licence agreement, available on recorded marked as annexure - 3 brings out that royalty is payable under Article 7 of the agreement by the licensee to the licenSor. Such royalty is computable on the invoice price appearing on the sale of all products sold by licensee during the royalty computation period. This part of the understanding by the parties is enough to say that

case is covered by Rule 9(1) (C) of the Customs Valuation Rules, 1998. Ld. Commissioner (Appeals) misconstrued the agreement and decided the case under mistake of fact. He has not all thoroughly examined licence agreement to appreciate the spirit of Article 2 read with article 1 (b) and (7) of the licence agreement. Those observations are sufficient to allow the Revenue's appeal.

3. Revenue relies on Apex Court judgment in the case of Matsushita Television and Audio (I) Ltd. vs. Commissioner of Customs 2007 (211) ELT 200(S.C.). There is no difference to the proposition of law laid down therein.
4. In the result, appeal of Revenue is allowed.

[Dictated & Pronounced in the open Court].



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