Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10433 of 2024

(Arising out of OIA-AHM-CUSTOMS-000-144-24-25 dated 09/07/2024 passed by Ld.Commissioner of CUSTOMS (Appeals), AHMEDABAD)

PAPLAJ FOREIGN TRADE LLP **.........Appellant**
Plot 79 at Surat SEZ, Dimond Park
Near Railway Station, Sachin
Surat, Gujarat 394220

VERSUS

CUSTOMS AHMEDABAD **.........Respondent**
Office of Pr. Commissioner of Customs,
First floor, Customs House, Opposite old High Court,
Navrangpura, Gujarat, Ahmedabad-380009,

APPEARANCE:
Shri. Manish Jain, Advocate for the Appellant
Shri. G. Nair, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. 11843 /2024

DATE OF HEARING: 27.08.2024
DATE OF DECISION:27.08.2024

SOMESH ARORA

At the outset an objection has been raised by the Learned AR that the matter is under challenge before the Hon'ble High of Gujarat as mentioned by DGRI Office both in relation to import and export consignments.

2. The Learned Advocate submits by making a statements on record before us that the matter is pending before the Hon'ble High Court of Gujarat in relation to import consignments only brought in by them which are under investigation and not in respect of export consignment which are the impugned goods in case before us and are live consignments.

3. We have considered accordingly, on the basis of statements made by the learned advocate on record before us, the matter pertains to alleged over valuation stated to be resorted by the appellant in this case which were subjected to speaking order for the purposes of provisional release of the seized goods which were attempted to be exported and for which various condition were imposed vide Provisional Release Order (Letter Form) dated 19.04.2024 which are as follows:

<u>Condition of Provisional release</u>

i. Execution of Bond for the value of the seized goods i.e. Rs. 589858014.00

ii. Furnishing Bank Guarantee or Security Deposit of Rs. 147464504.00

iii.

1. Bank Guarantee must be with Auto renewal clause .2. The Bond shall incorporate a clause that if the exports are made under any export promotion schemes, the finalization of export incentives should be done only after the final decision in the matter. 3. The detained goods are provisionally released for export purposed only.(any other conditions, as prescribed by adjudicating authority)3.

3. Bond referred to in para above should contain an undertaking that you will pay the duty, line end/or penalty as may be adjudged by the Adjudicating authority, subject to appellate provisions under the Act. Further, where security is furnished by way of Bank guarantee , the Bank guarantee should contain a clause binding the issuing bank to keep it renewed and valid till adjudication of the case, or in the event of non-renewal of Bank Guarantee as above, the guaranteed amount re credited to the Government account by the bank on its own.

4. Feeling aggrieved by the conditions imposed as the onerous and therefore un-pragmatic for taking the release for export, the appellants are before us.

4.1 The main argument placed by the appellant is that in special economic zone environment, the Customs department has no jurisdiction to challenge export valuation. The appellants have in this regard relied upon following case law:

- Hazel Mercantile Ltd. V. Commissioner of Customs, Kandla- 2022 (379) E.L.T. 357 (Tri. -Ahmd.)
- Hazel Mercantile Ltd. V. Commissioner of Customs, Kandla- 2022 (379) E.L.T. 275 (S.C.)
- Commissioner v. Navshakti Inds. Pvt. Ltd.- 2011 (269) E.L.T. A146 (S.C.)
- G.S. Nuts v. Commr. of Cus., Inland Container Depot 2016 (335) E.L.T. 397 (Del.)
- Printwell Offset v. Union of India- 2016 (336) E.L.T. 606 (Guj.)
- VKC Nuts Pvt. Ltd. v. Commissioner of Customs, Nhava Sheva-V-2020 (374) E.L.T. 782 (Tri.- Mumbai)
- Shilpa Creation Pvt. Ltd. v. Commr. of Customs (Airport), Kolkata 2007 (220) E.L.T. 503 (Tri.- Kolkata)
- Commissioner of Cus. (Import), Mumbai v. ASB International Pvt. Ltd.- 2016 (344) E.L.T. 1046 (Tri.- Mumbai)
- Tech Mahindra Ltd. v. Commr. of Cus.. CSI Airport, Mumbai- 2020 (374) E.L.T. 792 (Tri.- Mumbai)
- Meenakshi International V Pr. Commissioner of Customs- 2023 (384) E.L.T. 59 (Del.)
- Divine Chemtee Ltd. v. Pr. Commr. of Cus.- 2022 (381) E.L.T. 476 (A.P.)
- Imran Ahmed v. Commr. of Cus., C. Ex. & S.T., Hapur- 2019 (370) E.L.T. 161 (Tri.-All.)
- ONGC Petro Additions Limited Vs. QC., Ahmedabad, 2023 (12) TMI 530-CESTAT Ahmedabad
- PI Industries Limited Vs. Principal Commr. of Cus., Ahmedabad, 2024 (6) TMI 203-CESTAT Ahmedabad
- Sagar Impex Vs. Commissioner of Customs Airport, Mumbai 2017 (358) EL.T. 504 (Tri. -Mumbai)
- Woodern Style Plus Exports Vs. Commr. of Cus. & C. Ex., Tiruchirappalli, 2019 (370) E.L.T. 778 (Tri. - Chennai)
- Kalima Exim Vs. Commr. of Customs, Tuticorin, 2023 (386) E.L.T. 305 (Tri. - Chennai)

4.2 Further it was also emphasized by them that the allegation of the department is still not clear at this stage as no reason is emanating from record as to why they will over value while working in SEZ environment under supervision of Custom department as well as Development Commissioner and when remittance in the past were duly coming.

4.3 Further, it was also emphasized that their various import consignments have also been subjected to investigation and have been detained by the Customs and value difference between import and export consignments as documented on record before the Customs Authorities is around 1% to 2%. Therefore, there cannot be an allegation of circular trading in which even normally in either of the transactions, over valuation or under valuation is resorted to earn export incentives, etc. It was also their submission that while working in SEZ environment they do not have to pay any duty unless they sell the goods i.e. Silver studded, diamonds in the Domestic Tariff Area. Again, it was pointed out by them that the diamonds were subjected to test by the Customs Department and were not found to be anything other than declared. Therefore description of goods is not under challenge. There is no reason to suspect over valuation by the department, as it has also disregarded the documentary evidence on the import side which is before the department and which indicates only 1% or 2% lower import price. Therefore appellant emphasized that there should not be asked any Bank Guarantee, as their exports will suffer which may lead to cancellation of orders due to delay in export consignment, when the fashion and early delivery are paramount requirements, in international trade.

5. The Learned AR pointed out and justified the amount imposed of 25% of appellant’s declared value, as condition for Bank Guarantee as well as bond for their own value on the basis that the spectrum of investigation at present is not ascertained and may have to cover the past consignments, in which

case 25% of the value as Bank Guarantee stands justified in this case of over valuation, even though no demand of duty is involved as huge penalty can be imposed justifiably by the department and therefore, quantum of Bank Guarantee is justified. He also put forth the argument that whether SEZ units can be subjected to Customs investigation or not is a matter to be decided only on examination of detailed legal position.

6. We have considered the arguments from both sides. As at this stage, we are not inclined to examine various legal issues involved on merits or various facts that may come on record in future. We find that the SEZ units are class by itself. A running SEZ unit is subjected to various checks on regular basis as per statutory provisions both by S.E.Z Customs and Office of Development Commissioner. It will be subjected to various permissions from Development Commissioner as well as Customs Department including for debonding as per rules and procedure for its exit as prescribed under the SEZ Act, 2005. We further find that there are vigorous checks carried out at each stage by the Development Commissioner Office and there is, at present nothing on record which indicates that the SEZ Customs or Development Commissioner Office has found anything wrong with the export consignment, which is the matter of concern before us. Further, we also find force in submission made by the learned advocate that as documented the difference between import consignments and present export consignment is not more than 1 % or 2% which can easily justify the value addition to be done by them by adding silver as well as labour to the import consignment. Taking note of the fact there is 1% or 2% difference between import and export consignment as stated by the learned advocate and as comes out from the following para 2 of DRI written to Development Commissioner of letter dated 02.02.2024.

> *Para "2. Acting on the above intelligence, live consignments of Cut and Polished Diamonds Imported by Puplaj Foreign Trade LLP under 33 Bills of Entry through Surat SEZ were put on hold and examined under Panchnama dated 11/12.03.2024 in the presence of independent*

panchas and authorised person of the unit & CHA. During the examination, the goods were tested on sample basis on Diamond Testing Machine installed in strong room of DGDC, Surat SEZ in presence of GJEPC empanelled valuer Shri Suleman I. Zaveri. The valuer, Shri Suleman Zaveri examined the consignments on sample basis and opined that the goods were 'natural Diamonds' having actual value of only around 1% of the declared value of each diamond. Further, during the panchnama, it was learnt that 9 (Nine) consignments of finished goods, Le. 92.5 Percent Cut & Polished Natural Diamonds studded Silver Jewellery' were also lying in DGDC Strong Room for export. The export consignments were also examined and it was noticed that the raw materials i.e. Cut and Polished Diamonds used in export goods were imported by the said unit vide various Bills of Entry dated 07.03.2024 through Surat SEZ and after studding the same in Silver Rings, Shipping Bills (9 S/Bs) were filed for export of finished goods. During examination of sample pieces of goods meant for export, it was noticed that goods were found mis-declared in terms of value. Thus, <u>on the basis of valuation and test report of 'Cut & Polished Diamonds', total 7017 pe of "Natural Diamonds' having declared value of 211.04 crores, as per B/Es, imported on 11.03.2024 and 1580 pcs of 'Diamonds studded Silver Rings' having FOB value of 61.23 Crores were detained</u> under the provisions of Customs Act, 1962 under the reasonable belief that goods were mis-declared in terms of value and were liable to confiscation."

Further, the value as ascertained primarily by the department if it is taken to be correct, then the value is only about 58 Lakhs. Therefore, practically if Appellants do not take release of goods due to onerous conditions, then department has nothing but a security of Rs. 58 Lakhs of goods in hand with itself. Whereas after export, the appellants will be under legal obligation under F.E.M.A to realise 58 Crores for itself, as well as for the nation. Balance of convenience and national interest at this stage is therefore definitely in favour of pragmatic approach of imposing reasonable conditions for release.

7. Going by the value declared in the instant case which is about 58 crores, 25% i.e. Rs. 14.742 crores has been sought as guarantee by the department. We also find that even if the valuation of 58 Lakhs is taken by the department, the ends of justice do not require such onerous condition of Bank Guarantee to be imposed. Accordingly we direct that in the facts of the case specifically on the basis of various considerations, as indicated by us, the execution of bond as per the value declared of the seized goods as indicated by the appellant and furnishing of Bank Guarantee/security deposit of Rs. 50 Lakhs will justify a

reasonable approach. Accordingly we direct that in the above conditions as reproduced in para 2 of this order, only Condition No. 2 relating to furnishing of Bank Guarantee/security deposit stands modified and will read as "furnishing bank guarantee and security deposit of Rs. 50 Lakhs," other conditions will remain as above.

8. Ordered accordingly, the provisional release order (as a point No. 2) stands modified accordingly. As the consignments have been delayed in export, same shall be released within a month of appellant's doing their part as per this order.

9. Appeal disposed of

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi