IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal Nos. C/539-541/2009

(Arising out of Order-in-Appeal C.Cus No. 905-907/2009 dated 26.08.2009 passed by the Commissioner (Appeals), Chennai)

M/s. Jaipur Gems : Appellant

Vs.

C.C.-Chennai (Air Port & Cargo) : Respondent

Appearance:-

Shri M. N. Bharathi, Advocate
for the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
for the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **17.04.2018**

Final Order No. ***41819-41821 / 2018***

1. Facts: -

M/s. Jaipur Gems, Chennai filed bills of Entries on various dates for their clearances of 18KT Gold Jewellery studded with diamonds. The said goods were imported under notification 85/2004 dated 31.08.2004 under INDO-THAILAND Free trade agreement. The said bill of entries was assessed by the department accepting the claim of the appellant for exemption from special additional duties under SL. No. 1 of the notification 20/06 dated 01.03.2006. The department later came to know that goods imported and the notification 85/04 dated 30.08.2004 was not eligible for exemption from special additional duty under Sl. No. 1 of the notification No. 20/06 as per the proviso 3 to the notification. Department issued demand notices on 20.11.2007, 27.11.2007 and 23.02.2008 for the differential duty. The appellants paid duty along with interest and requested for speaking order so as to file appeal before Commissioner (Appeals). Thus, appeal was preferred against Order-in-Original before the Commissioner (Appeals) who, vide order impugned herein, upheld the same. Hence, this appeal.

2. On behalf of the appellant Ld. Counsel, Shri M.N. Bharathi, submitted that the Department has not challenged the assessment and, therefore, cannot raise the demand alleging that the benefit of notification is not eligible. He relied on the decision in the case of Collector of Central Excise, Kanpur vs. Flock (India) Pvt. Ltd. 2000 (120) E.L.T. 285 (S.C.).

3. The Ld. AR, Shri K. Veerabhadra Reddy, supported the findings in the impugned order. He referred to Section 17(4) of the Customs Act, 1962 and argued that when it is found after verification that self-assessment is not done correctly, the officer can re-assess the duty on the goods. In Venus Enterprises vs. C.C.E., Chennai, the Tribunal has held that the proper officer can issue demand notice without review of the order of assessment.

4. Heard both sides.

5. On merits, the appellants do not have a case that they are eligible for the benefit of notification claimed by appellants. Subsequent to assessment and out of charge of the goods, the assessing officer found that the conditions of the notifications are not fulfilled and that appellants are liable to pay SAD. Section 28 empowers the Department to demand the short paid duty. We do not find any merit in the contentions raised by appellant. The appeal is dismissed.

(Operative part of the order was
pronounced in open Court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Sdd