

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
COURT NO. II**

**Customs Appeal No.50437 of 2019 (SM)**

[Arising out of Order-in-Appeal No.392-394(SM)CUS/JPR/2018 dated 21.12.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur.]

**Shri Chetan Mayach,**

**Appellant**

Production Manager,  
M/s.Tarkesh Art Jewellery,  
T-3, SS Towar, Dhamani Street,  
Chaura Raasta, Jaipur-302 003 (Rajasthan).

Versus

**Commissioner of Customs**

**Respondent**

(Preventive),  
Jodhpur Hqrs. NCR Building,  
Statute Circle, C-Scheme,  
Jaipur-302 005.

**AND**

**Customs Appeal Nos.50438 of 2019 (SM)**

[Arising out of Order-in-Appeal No.392-394(SM)CUS/JPR/2018 dated 21.12.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur.]

**M/s.Tarkesh Art Jewellery,**

**Appellant**

Plot No.H-63, SEZ-II,  
Sitapura Industrial Area,  
Jaipur-302 003 (Rajasthan).

Versus

**Commissioner of Customs**

**Respondent**

(Preventive),  
Jodhpur Hqrs. NCR Building,  
Statute Circle, C-Scheme,  
Jaipur-302 005.

**APPEARANCE:**

Shri Arun Goyal, Advocate for the appellant.

Shri Y. Singh, Authorized Representative for the respondent.

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.50727-50728/2020**

**DATE OF HEARING:26.02.2020  
DATE OF DECISION:24.07.2020**

**ANIL CHOUDHARY:**

The appellant, M/s. Tarkesh Art Jewellery (Proprietor – Navrattan Johri) is a unit in SEZ-II at Sitapura Industrial Area, Jaipur, who have been granted licence under Section 15 of Special Economic Zone Act (SEZ) for manufacture of plain and studded gold/silver/copper/brass jewellery. The other appellant, Shri Chetan Mayach is the Production In charge of M/s.Tarkesh Art Jewellery. They are in appeal against the impugned order-in-appeal, whereby the order of absolute confiscation of 78.780 kgs. of silver was modified to the order of confiscation with option to redeem on redemption fine of Rs.10 lakhs. Further, demand of duty of Rs.2,26,308/- on silver found short and Rs.1,42,813/- on gold found short was confirmed. Further, penalty of Rs.3,68,491/- was confirmed under Section 114 A of the Customs Act and further, penalty on the appellant – Chetain Mayach amounting to Rs.70,000/- under Section 112(b) of the Customs Act, 1962 was confirmed and further upheld the confiscation of the Santro Car bearing registration no. RJ 19 CA 6174 with option to redeem on payment of redemption fine.

2. The brief facts are that on 3.8.2016 at 6.45 p.m. during the checking by the security staff posted at the gate of SEZ, Zone-II, Sitapura Jaipur, a vehicle No.RJ 19 CA 6174 being driven by Shri Chetan Mayach S/o Girdhari Lal Mayach (Appellant) Production in Charge of M/s. Tarkesh Art Jewellery, was trying to exit from the gate without checking. The Security Guards ran after the vehicle and managed to stop the vehicle. The said car bearing no. RJ 19 CA 6174 was thoroughly searched. Three gunny bags were found lying in the dicky (Boot Space) of the said car containing silver grains packed in four metal boxes. The weight of the silver grains was carried out and the net quantity of 78.780 kgs. was found. The purity test of silver grain was carried out and the purity of silver grain was found to be 99.5 per

cent. On being asked about any specified documents authorizing the movement/removal of the said goods, Shri Chetan Mayach stated that no documents for removal of the goods are available with him. Therefore, on a reasonable belief that the said goods were liable to confiscation under Section 111, and the conveyance carrying the said goods was also liable to confiscation under Section 115 of the Customs Act, 1962, as the same were being removed for clandestine removal in contravention of the provisions of SEZ Act, 2005 read with the provisions of Customs Act, 1962 (as made applicable), the silver grain totally weighing 78.780 kgs. valued at Rs.35,70,310/- was seized along with the vehicle bearing no.RJ-19 CA 6174 Make Hundai Santro valued at Rs.60,000/- under Section 110 of the Customs Act, 1962.

3. The Unit premise situated at Plot No.H-63, SEZ-II, Sitapura Industrial Area, Jaipur was also visited by the Customs Officers on 04.08.2016 and the stock of gold, finished gold jewellery, unfinished silver jewellery and silver in manufacturing process were taken. On physical verification of the stock available in the unit, 4859.384 gms. Of 0.999 purity gold/ gold jewellery and 54333.30 gms of 0.995 purity silver/silver jewellery/grains/slab were found in stock on 4.8.2016. Subsequently on taking into account the stock as per record of the unit, 85 kgs silver was imported on 27.07.2016 and on physical verification on 4.8.2016, a shortage of 48.481 kgs silver was noticed involving duty amounting to Rs.2,26,308/-. A detail chart was prepared in respect of gold and silver procurement vis-a-vis export of gold jewellery and silver jewellery respectively. In respect of silver jewellery, apart from shortage as mentioned above no additional shortage has been noticed, but difference of 464.577 gms. of 24 carat gold in stock, after allowing 5% wastage norms on gold jewellery, as per foreign trade policy was also found.

4. It appeared to Revenue that –

(A) Shri Chetan Mayach, on instruction of Shri Navrattan Johari was removing goods clandestinely from the SEZ and therefore effecting smuggling of goods for wilful evasion of customs duty.

(B) Shri Narattan Johari, Proprietor of M/s.Tarkesh Art Jewellery during the course of investigation accepted the fact in his statement, that the goods were being cleared from the Zone without declaring the same before the Customs officer on duty at the SEZ Customs gate office, and having no valid/legal documents required for such clearance.

(C) During stock taking and physical verification of stock in the factory premise on 4.8.2016, stock of silver was found short which shows that Tarkesh Art Jewellery has been engaged in clandestine removal of goods in past also. Shri Navrattan Johari accepted the shortage of the stock in his statement dated 5.8.2016. Also, at the time of stock taking, Shri Navrattan Johari did not produce Raw Material Stock Register, Casting Process Register, Filling Process Register, Setting Process Register, Stock Register, Stock 22 cts. Mouting (Casting) Register, Polished Process Register and Finished Goods Register, and produced these registers on 10.08.2016. It appeared that M/s. Tarkesh Art Jewellery was not maintaining the stock register on day to day basis in contravention of the provisions of Rule 34 of the SEZ Rules, 2006 read with Rule 22(2) of the SEZ Rules, 2006, and was indulging in the clandestine removal of the goods from the SEZ without documentation and without discharging the duty liability on such removals.

(D) Shri Navattan Johari accepted and signed the Chart wherein gold and silver procurement vis-a-vis export of gold jewellery and silver jewellery has been shown as per the Bills of Entry and Shipping Bills and physical stock taken on 04.08.2016 respectively. In respect of silver jewellery, apart from

the shortage as mentioned above, no additional shortage has been noticed. However, difference of 464.577 gms. in terms of shortage of gold in stock, after allowing 5% wastage norms was found. The subsequent plea that this shortage is because the gold particles present in dust and in the slurry at the bottom of water tank also did not appear to be acceptable, as no such entries have been shown by the appellant in their stock register. As per Rule 34 of SEZ Rules, 2006, if any goods have not been accounted for in the books of accounts, the duty shall be recoverable on the unaccounted shortage.

5. Pursuant to the issue of show cause notice dated 31.01.2017 , order of adjudication dated 29.08.2017 was passed, which was modified in part vide impugned order-in-appeal as aforementioned. Being aggrieved, the appellants are in appeal before this Tribunal.

6. Ld. Counsel for the appellant, among others, urges the following grounds:-

“(A) The impugned order-in-original is wholly beyond jurisdiction and beyond the statutory provisions of the Customs Act read with SEZ Act.

(B) Ld. Counsel relies upon the Gazette Notification No.2665(E) dated 5.8.2016 and also on the ruling in the following cases:-

- (i) ***M/s.Bajirao Ghosalkar Bhavin Choksi Vs. CC (CSI Airport) Mumbai – 2018 –TIOL-198-CESTAT-MUM***
- (ii) ***M/s.Kishanlal Jewels Pvt. Ltd. Vs. CC, Gautam Budh Ngr 2020-TIOL-55-CESTAT-ALL***
- (iii) ***M/s.Charisma Jewellery Pvt. Ltd. Vs.CC, Airport, Mumbai 2016-TIOL-1963-CESTAT-MUMBAI.***
- (iv) ***M/s.Sangam International Vs.CC, Air Cargo Export, New Delhi. 2017-TIOL-2439-CESTAT-DELHI***

(C) It is further urged that taking out of the goods from SEZ is not equal to import, and as such, the provisions of Section 111 and 112 of the Customs Act are not relevant. Reliance is placed on the ruling in the case of **Charisma Jewellery Pvt. Ltd. – 2016 (340) ELT 221 (Tribunal-Mumbai)**.

(D) It is further urged that the goods were validly imported and proper records were maintained. The seized goods were properly imported vide bill of entry No.1330 dated 28.07.2016. 85 kgs. of silver having purity of 0.999 was imported, among others, goods being gold bars of 3 kg., Alloy for gold 12 kgs., copy of which has been annexed in the appeal paper book. As the raw materials being gold and silver properly imported and also recorded in the books of Account, it is impossible for the appellant to remove finished goods and inputs clandestinely. For any shortage or failure to account for the inputs, the appellant is liable for recovery of duty and other penal action in accordance with the Special Economic Zones Act, 2005, which has provisions for adequate safeguards.

(E) It is further urged that the Production Manager, Shri Chetan Mayach has approached the SEZ gate and had requested for permission to take the goods out for job work, for making of semi-finished jewellery in view of the urgent orders in hand. Admittedly, there was no concealment of the silver grain in any cavity of the car, and rather, the same was kept in the boot of the car and visible. There is no illegality in the movement of the goods within the SEZ. At the time of so

called interception, the car was still within the SEZ area. In support of their contentions, the appellant had requested for cross-examination of the Panch Witnesses, the seizing officer, guard at the SEZ gate at the time of seizure, for factual appraisal. But to the prejudice of the appellant, the said request was denied without assigning any cogent reasons. Thus, the impugned order is also bad for violation of the rules of the Natural justice.

(F) As regards the alleged shortage of silver, 48,481 kgs. valued at Rs.21,97,133/-, at the time of verification in the factory premises, the appellant had made a categorical assertion that the quantities were lying in the care of the Karigar, being about 40 kgs. given on 28.07.2016. In spite of the affidavit of the said karigar, Mr.Kapil Soni, dated 15.02.2019, in support of the contention of the appellant, dated 12.08.2016 and 22.12.2016, that upon return of the said Karigar, Mr. Kapil Soni, out of the quantity found short, it was stated that the said worker had stored the quantity of the silver bars in the pit, under the table in the wax room. The said pit was not searched by the officers at the time of search on 4.8.2016. It had also been prayed by the appellant in the letter dated 12.08.2016, the Department may please verify the facts as the said pit is still lying untouched. By the subsequent letter of the appellant dated 22.12.2016, it was further clarified that 10,500 gms. of silver was the manufacturing loss in making of silver jewellery and rest 37,981.370 gms was found available . Further, the said karigar, Mr. Kapil Soni had stated that on his return from

leave, he returned 38kgs. of silver to the Production Manager, Mr. Chetan Mayach, out of the 40 kgs. of silver, he received for production on 29.07.2016. He also stated that, as he was proceeding on leave, for safe custody he kept the silver in the pit in the wax room, which was below the table."

7. Ld. Counsel further urges that both the Production Manager and the Proprietor have stated in their statements under Section 108 that the goods/silver was being sent out for job work, there being urgency due to request for early delivery by the Overseas buyers. In support thereof, the appellants have also referred to their Performa Invoice No.TAR-08/16-17 dated 25.07.2016 to the buyer, Sun Shane Ltd. Hong Kong for supply of silver jewellery studded with semi-precious stones, pendent, earrings, rings and necklaces, having net weight about 80 kgs.

8. Ld. Counsel further urges that as regards alleged shortage of gold, it was stated immediately after inspection, that the same is lying in the form of dust – slurry in the tank and the same is only periodically recovered. This fact was urged by Mr. Navrattan Johari, Proprietor in his statement recorded under Section 108 on 10.08.2016. Mr. Johari had categorically stated that some gold particles get stuck in the hands of the karigar and they washed their hands in the water tank especially kept for the purposes. This tank is refined once in 2-3 years and the gold is recovered. Thus, when they did periodical refining of the tank, apparent shortage of 464.577 is recovered and the difference /shortage reconciled. Accordingly, Id. Counsel prays for allowing their appeals with consequential benefits.

9. Ld. Authorised Representative for the Department has relied upon the impugned order.

10. Having considered the rival contentions and after perusal of the records, we find that prior to 9.8.2016 when vide notification no.GO 2665 (E) in the Gazette, the Government in exercise of the powers under sub-section (1) of Section 21 of the SEZ Act, notified the offences contained in Sections 111, 113 and 115 etc of the Customs Act, 1962, as offence under the SEZ Act. Thus, prior to 9.8.2016, Section 111 of the Customs Act is not attracted, when admittedly, the incidence of seizure and inspection was on 3/4<sup>th</sup> August, 2016. Further, a Coordinate Bench of the Tribunal in the case of **Charishma Jewellery Pvt Ltd.(supra)** under the fact held that one Shri Abhishekh Parikh, who was found carrying gold pieces without valid documents while exiting from SEEPZ - Sub-Economic Zone. The said person had a daily entry pass for **M/s.Charishma Jewellery**, a unit in SEZ and a permanent entry pass as employee of Diastar Jewellery Pvt. Ltd. The said Abhishekh Parikh had produced a sale invoice issued by a unit situated outside SEZ, which is a group company of Charisma Jewellery. It was alleged by the Customs that goods was being attempted to be smuggled into DTA from SEZ. Vide order-in-original, it was held that there was an attempt to remove gold from Charisma Jewellery with intent to evade duty. Accordingly, it was held that 11 pieces of diamond studded gold jewellery was liable for confiscation under Section 111(j) and (o) of the Customs Act. This Tribunal took notice of Section 51(1) and Section 53(1) of the SEZ Act, 2005, wherein Section 51 (1) provides that, " SEZ Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

11. Further, Section 53(1) of the SEZ Act provides that – "A SEZ shall, on and from the appointed day, be deemed to be territory outside the customs

territory of India for the purposes of undertaking the authorised operations.”

12. It was further observed that the Authorised operations under the SEZ Act are the activities permitted to a Developer by the Board of Approval or those permitted to units by the Approval Committee.

13. This Tribunal held as follows:-

*"11. The original authority has placed reliance on section 53(2) of Special Economic Zones Act, 2005 to invoke jurisdiction. That provisions deeming zones to be customs ports does not ipso facto, confer jurisdiction upon officers of customs. Officers of customs are a creation of the Customs Act, 1962 and thus from that statute that jurisdiction is conferred. A different statute will also have to incorporate an enabling provision for the exercise of such jurisdiction or empowerment of officers of customs. Such empowerment is conspicuously absent in the Special Economic Zones Act, 2005. Section 53(2) is intended to operate in a different context and not for empowering officers of customs, it is to be read with the Special Economic Zones Rules, 2006 that permits direct shipment of inputs from abroad to the zone and this deeming status enables issue of bills of lading for delivery at zones without the intermediate delivery through customs formations. The definition of 'specified officer' exists only in the Special Economic Zones Rules, 2006 and is intended to provide the qualification of the official discharging the functions of that office. Under the Special Economic Zones Rules, 2005 all officers appointed for implementation of the Act function under the Development Commissioner and the original authority, not being so, is not empowered to initiate proceedings under the Special Economic Zones Rules, 2005.*

*12. Notwithstanding the above conclusions on the jurisdictional competence of the original authority, it is also seen that the proceedings have invoked Section 111 and Section 112 of Customs Act, 1962. Jurisdiction is not merely territorial but also has to be in the context of the scope of the statute which is sought to be invoked. Section 111 and 112 can, undoubtedly, be invoked where laws other than Customs Act, 1962 have been contravened but only in relation to imports. The definition of 'import' under section 2(23) the Customs Act, 1962 is restricted to 'with its grammatical variations and cognate expressions, means bringing into India from a place outside India.' 'Notwithstanding the deemed status of being outside the Customs territory, zones are very much within the territory of India and the bringing out of goods from a zone fails to meet the definition of 'import' under Customs Act, 1962 and consequently fails the test of invoking the provisions of section 111 and 112. Even if the goods are subject to duty, section 12 of Customs Act, 1962 is not applicable owing to the definition of 'import'; the charging section is section 26 of Special Economic Zones Rules, 2005 which is outside the scope of invoking by the original authority. Colloquial comprehension or usage of export or import in relation to movement of goods to and from zones cannot substitute for the statutory definitions. Recourse to penal provisions without clear understanding of legalities is the surest mode of reverting to arbitrariness and lawlessness that preceded the dawn of civilization.*

13. *The question that, then, begs an answer is whether the alleged misdeeds of the appellants would have to be tolerated. That does not have to be so; the Special Economic Zones Rules, 2005 allows duty-free consumption of inputs and capital goods subject to conditions and these conditions are enshrined in the Special Economic Zones Rules, 2006. The activities of the units in the zones are also subject to review of annual performance by the legally constituted Approval Committee. It would be well-nigh impossible for the units to remove finished products or inputs without detection at the time of such annual review. And shortage or failure to account for inputs is visited by recovery of duty and other penal action in accordance with the Special Economic Zones Rules, 2005. There are adequate safeguards in that Act without the need to indulge in misadventure under the Customs Act, 1962 that does not extend to special economic zones. There are also provisions for action in the event of illicit removal by units. The notice issued by the Development Commissioner of SEEPZ Special Economic Zone is testimony to it; proceedings thereon will suffice to safeguard the economic integrity of the nation."*

14. I also take notice that the ruling of the Division Bench of this Tribunal in **Sangam International - 2017-TIOL-2439-CESTAT-DELHI**, under the fact that in the course of routine check at the gate of SEZ, the security staff found 12 pieces of yellow metal appearing to be gold bars concealed in polythene cover and was kept inside the car. Since the said consignment was not accompanied by any valid documents, the Customs Department seized the goods and pursuant to issue of show cause notice, gold bars were confiscated under Section 111 (e) of the Customs Act, 1962. The Division Bench relying on its earlier judgement in the case of **Meenakshi International - 2017 -TIOL -01-CESTAT- DELHI** held that Customs Department did not have jurisdiction within the SEZ area established under SEZ Scheme read with SEZ Act. Accordingly, the order of confiscation and penalty was set aside.

15. I further find that the appellant had given a cogent explanation at the time of seizure and also the said explanation was supported by the statement of Proprietor of Tarkesh Art Jewellery. Further, the statement has been corroborated with cogent evidence of the statement of karigar as regards shortage of silver. Further, the shortage of gold has also been

supported by the cogent explanation which has not been found to be untrue. The contention of the urgency to manufacture silver jewellery is also supported by proforma invoice for sale in favour of **Sun Shine Ltd., Hong Kong.**

**16.** Accordingly, relying upon the ruling of the Division Bench of this Tribunal in the case of **Sangam International (supra)** and the cogent explanation given by the appellant, which has not been found to be untrue, I allow both the appeals and set aside the impugned order. The appellants are entitled to consequential benefits in accordance with law.

[Order pronounced on 24.07.2020 ]

**(ANIL CHOUDHARY)**  
MEMBER (JUDICIAL)

Скр.