

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 22/01/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/50145-50154/2015-CU[DB] dated 14/01/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar (CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	CC/MISC/51383/2014, C/544/2011 C/MISC/55810/2014	ROCHEES WATCHES PVT. LTD. B-22, SHRI JI KI MORI, TRIPOLIA BAZAR JAIPUR (RAJASTHAN)
2	C/545/2011	SH. ISHWAR DAS MOOLRAJANI, 21, SHRI JI KI MORI, TRIPOLIA BAZAR JAIPUR (RAJASTHAN)
3	C/546/2011	SH. NANAK DAS MOOLRAJANI, 21, SHRI JI KI MORI, TRIPOLIA BAZAR, JAIPUR (RAJASTHAN)
4	C/547/2011	SH. HARGUN DAS NEBHNANI, 21, SHRI JI KI MORI, TRIPOLIA BAZAR, JAIPUR (RAJASTHAN)

5 C/MISC/55840/2014 C/556/2011 **PRAKASH SALES AGENCY**
21, SHRI JI KI MORI,
TRIPOLIA BAZAR, JAIPUR.

6 C/MISC/55811/2014 C/557/2011 **RAJASTHAN WATCH**
MANUFCTURERS
B-21, SHRI JI KI MORI,
TRIPOLIA BAZAR, JAIPUR.

7 C/MISC/55812/2014 C/558/2011 **JAIPUR TIMES**
INDUSTRIES
A-21, SHRI JI KI MORI,
TRIPOLIA BAZAR, JAIPUR.

8 C/559/2011 **INDIA WATCH PARTS**
MANUFACTURERS
SHRI JI KI MORI, TRIPOLIA
BAZAR, JAIPUR.

9 C/MISC/55841/2014 C/560/2011 **HMD EXIM PRIVATE**
LIMITED
24, SHRI JI KI MORI,
TRIPOLIA BAZAR, JAIPUR.

10 C/561/2011 **ROCHI RAM & SONS**
C-21, SHRI JI KI MORI,
TRIPOLIA BAZAR, JAIPUR.

11 NAME AND ADDRESS OF
RESPONDENT
-C.C.. JAIPUR I
NCRB, STATUE CIRCLE
C-SCHEME, JAIPUR,

Other Appellants and Respondents as per Annexure

Copy To

12 Advocate(s) / Consultant(s):

**K. K. ANAND, ADVOCATE
A-103, DEFENCE COLONY,
NEW DELHI,
110024**

13

**Economic Law Practic At Delhi
405, 4TH FLOOR, WORLD
TRADE
CENTRE, BARAKHAMBA
LANE, NEW DELHI,**

14 Bar Association, CESTAT, Delhi

15 Director Publications, Customs, Excise. I.P. Estate, Delhi

16 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

17 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

18 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

19 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

20 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

21 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

22 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

23 C.D.R. 24 Office Copy 25 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
COURT – II**

Appeal Nos. C/544-547 & 556-561/2011-CU[DB]

WITH

**Misc. Application Nos.C/MISC/51383,55810,55840,55811,55812
& 55841/2014-CU[DB]**

M/s. Rochees Watches Pvt. Ltd.
(in appeal No.C/544/2011
with C/MISC/55810/2014)

Shri Ishwar Das Moolrajani
(in appeal No.C/545/2011)

Shri Nanak Das Moolrajani
(in appeal No. C/546/2011)

Shri Hargun Das Nebhanani
(in appeal No.C/547/2011)

M/s. Prakash Sales Agency
(in appeal No.C/556/2011
with C/MISC/55840/2014)

M/s. Rajasthan Watch Manufacturers
(in appeal No.C/557/2011
with C/MISC/55811/2014)

M/s. Jaipur Times Industries
(in appeal No.C/558/2011
with C/MISC/55812/2014)

M/s. India Watch Parts Manufacturers
(in appeal No. C/559/2011
with C/MISC/55813/2014)

M/s. Rochi Ram & Sons
(in appeal No. C/561/2011
with C/MISC/51383/2014)

M/s. HMD Exim Private Ltd.
(in appeal No. C/560/2011
with C/MISC/55841/2014)

APPELLANTS

Vs.

Commissioner of Central Excise, Jaipur – I

RESPONDENT

Appeared for appellants: Shri K.K Anand, Shri Jitin Singhal,
Ms. Surabhi Sinha, Advocates

Appearance for Respondent: Shri Amresh Jain, DR with Shri VP Batra,
DR and hri Nath Mal Verma, Supdt.,
Jaipur

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr.Manmohan Singh, Technical Member

Reserved on: 25.11.2014

Pronounced on...14.01.2015

Per D.N. Panda

Final Order No. 50143-50154/15

1.1 When the manufacturer exporter M/s Rochees Watches Pvt. Ltd., attempted to export wrist watches of inferior quality filing 2 (two) shipping bills both dated 21.8.2004 in Air Cargo Complex, Jaipur, making gross over-valuation of **FOB** thereof to make undue claim of DEPB, it came under purview of investigation of **Customs Special Task Force (STF)**. That agency while investigating the matter came across filing of further 6 (six) shipping bills all dated 10.1.2005 by that exporter at the ICD, Jaipur. Accordingly investigation was extended to the exports covered by all such shipping bills as well as past exports made by that exporter and merchant exporters related to the Directors of M/s Rochees Watches Pvt. Ltd. It was noticed that FOB of all such exports were over-valued by the exporters calling for determination thereof as follows:

Export made by Manufacturer Exporter M/s. Rochee Watches Pvt. Ltd.			
Past/Live Consignment details	Period	FOB declared	FOB determined
Past Exports	01.01.2000 to 05.08.2004	51,21,17,945	14,17,10,591

Live consignments covered by Shipping Bill Nos. 1002 & 1003 both dated 21.08.2004 filed in Air Cargo, Jaipur	21.08.2004	87,95,880	15,00,000
Live consignments covered by Shipping Bills Nos. 1023671 to 1023676 all dated 10.01.2005 filed in ICD, Jaipur	2004-05	2,35,21,894	44,75,000
MERCHANT EXPORTER APPELLANTS			
Exporters	Period of Export	FOB declared	FOB determined
M/s. Rochi Ram & Sons	01.01.2000 to 05.08.2004	15,55,48,124	4,11,95,555
M/s. Jaipur Time Industries	01.01.2000 to 05.08.2004	9,87,62,865	2,51,03,300
M/s. Rajasthan Watch Manufacturers	01.01.2000 to 05.08.2004	10,52,01,906	2,74,85,687
M/s. India Watch Parts Manufacturers	01.01.2000 to 05.08.2004	8,20,71,770	1,91,49,228
M/s. HMD Exim Pvt. Ltd.	01.01.2000 to 05.08.2004	5,76,25,800	1,59,00,000
M/s. Prakash Sales Agency	01.01.2000 to 05.08.2004	65,56,456/-	19,04,000/-

1.2 In the course of investigation, it came to the notice of the investigating team that the relations of the Directors of **M/s. Rochees Watches Pvt. Ltd.** in Jaipur were also engaged in the export and import of similar such wrist watches. Samples were taken from the export attempted to be made on **21.08.2004** and market enquiry thereon was conducted. The **STF** found that the live consignments of **55,000** pieces of Quartz Analog Wrist Watches were attempted to be exported from ICD, Rajisco, Jaipur to M/s. Legend Watch Manufacturing Ltd., London, U.K. on account of M/s. Legend Watch Manufacturing Ltd., Hong Kong. The ICD officials were instructed to draw the representative samples from the consignments covered by shipping bills presented at the ICD.

8.

1.3 Two shipping Bills presented at the Air Cargo and six shipping bills presented at ICD, Jaipur and past exports made as tabulated below disclosed claim of excess DEPB noted against each exporter as against actual DEPB admissible to each such exporter:

Shipping Bills submitted by MANUFACTURER Exporter M/s Rochee Watches Pvt. Ltd. FOR EXPORT ON 21.8.2004 at the Air Cargo and ICD (LIVE CONSIGNMENTS)						
Shipping Bills filed at	FOB declared	PMV determined	Difference of FOB & PMV	DEPB Claimed	DEPB Admissible	Excess DEPB claimed
Air Cargo Jaipur - 20000 PIECES of watches	8795880	1500000	7295880	1143464	195000	948464
ICD, Jaipur - 55000 PIECES of watches	23521894	4475000	19046894	3057847	581750	2476097
Total	32317774	5975000	26342774	4201311	776750	3424561
PAST EXPORTS MADE MERCHANT EXPORTERS DURING 1.1.2000 TO 5.5.2004						
	FOB	PMV	Difference of FOB & PMV	DEPB Availd	DEPB admis-sible	Excess DEPB availed
Ropchees Watches Pvt. Ltd.	512117945	141710591	370407354	90632816	25790711	64842105
Rochi Ram & Sons	155548124	41195555	114352569	24998537	6546823	18451714
Jaipur Time Industries	98762865	25103300	73659565	16906181	4205863	12700318
Rajasthan Watch Mfrs.	105201906	27485687	77716219	17767458	4646289	13121169
India Watch Pvt. Mfr.	82071770	19149228	62922542	14963063	3566987	11396076
HMD Exim Pvt. Ltd.	57625800	15900000	41725800	9876180	2684960	7191220
Prakash Sales Agency	6456456	1904000	4552456	1008000	304640	703360
Total	1017784866	272448361	745336505	176152235	47746273	128405962

1.4 Market enquiry conducted by STF in India and overseas revealed that there was misdeclaration of value of exports made by the exporter appellants to defraud exchequer making undue claim of DEPB. Learned Adjudicating authority upon hearing the exporter and

g.

examining evidence before him passed Order of adjudication dated 30.09.2009 with the following consequences:

APPEAL NO. C/544/2011
M/s Rochees Watches Private Limited

(1) Declared FOB value Rs.51,21,17,945/- in respect of 'Quartz analog wristwatches' exported from Air Cargo Complex, ICD (Rajsico) & ICD (Concor), Jaipur during 01.01.2000 to 05.08.2004 by **M/s Rochees Watches Private Limited, Jaipur** was rejected and PMV was determined as Rs.14,17,10,591/- under Section 14(1) of the Customs Act, 1962 for allowing DEPB benefit by the competent authority.

(2) Declared FOB value Rs.3,23,17,774/- in respect of 75000 pieces of 'Quartz analog wristwatches' exported vide Shipping Bills No.1002 and 1003 both dated 21.8.2004 from Air Cargo Complex, Jaipur and Shipping bills No.1023671 to 1023676 all dated 10.1.2005 from ICD (Rajsico), Jaipur by M/s Rochees Watches Private Limited, Jaipur was rejected and PMV thereof was determined as Rs.59,75,000/- under Section 14(1) of the Customs Act, 1962 for the purpose of determination of DEPB benefit by the competent authority.

(3) 'Quartz analog wrist watches' of which PMV determined as Rs.14,17,10,591/- (Declared FOB value of Rs.51,21,17,945/-) under Section 113(d) & (i) of the Customs Act, 1962I were confiscated. Since the goods were exported and not available for confiscation, Redemption fine of Rs.6,48,42,000/- (Rupees Six Crores Forty Eight Lakhs Forty Two Thousand only) was imposed on M/s. Rochees Watches Private Limited, Jaipur, in lieu of confiscation under Section 125 of the Act.

S.

(4) 'Quartz analog wristwatches' of which PMV determined as Rs.15,00,000/- (Declared FOB value of Rs.87,95,880/-) exported from Air Cargo Complex, Jaipur vide shipping bills No.1002 and 1003 both dated 21.8.2004, were confiscated under Section 113(d) & (i) of the Customs Act, 1962 and such goods having been exported and not available for confiscation, Redemption Fine of Rs.9,48,000/- (Rupees Nine Lakhs Forty Eight Thousand only) was imposed on **M/s. Rochees Watches Private Limited**, Jaipur, *in lieu* of confiscation in terms of the Bond executed by the exporter, under Section 125 of the Act.

(5) Quartz analog wristwatches' of which PMV determined as Rs.44,75,000/- (Declared FOB value of Rs.2,35,21,894/-) exported from 1CD, RAJSICO Jaipur vide Shipping Bills No.1023671 to 1023676 all dated 10.1.2005 were confiscated under Section 113 (d) & (i) of the Customs Act, 1962 and such goods having been exported and not available for confiscation, Redemption fine of Rs.24,76,000/- (Rupees Twenty Four Lakhs Seventy Six Thousand only) was imposed on M/s Rochees Watches Private Limited, Jaipur, *in lieu* of confiscation in terms of the Bond executed by the exporter, under Section 125 of the Act.

(6) Penalty of Rs. 15,00,00,000/- (Rupees Fifteen Crores) was imposed on M/s. Rochees Watches Private Limited, Jaipur under Section 114 (i) & (iii) of the Customs Act, 1962.

APPEAL No. C/545/2011
Shri Ishwar Das Moolrajani

Penalty of Rs.10,00,00,000/- (Rupees Ten Crores only) was imposed on **Shri Ishwar Das Moolrajani**, Managing Director/Partner of Mis Rochees Watches Private Limited, M/s. Rochi Ram & Sons, M/s

Sh

Jaipur Time Industries, M/s. Rajasthan Watch Manufacturers, M/s. India Watch Parts Manufacturers, Jaipur under Section 114(i) & (iii) of Customs Act, 1962.

APPEAL No. C/546/2011
Shri Nanak Das Moolrajani

Penalty of Rs.5,00,00,000/- (Rupees Five Crores only) was imposed on **Shri Nanak Das Moolrajani**, Director/Partner on Shri Nanak Das Moolrajani, Director/Partner of M/s. Rochees Waatches Pvt. Ltd., M/s. Rochi Ram & Sons, M/s. Jaipur Time Industries, M/s. Rajasthan Watch Manufacturers, M/s. India Watch Parts Manufacturers, Jaipur under Section 114(i) & (iii) of Customs Act, 1962.

APPEAL NO. C/561/2011
M/s Rochi Ram & Sons, Jaipur

(1) Declared FOB value Rs.15,55,48,124/- in respect of 'Quartz analogue wristwatches' exported from Air Cargo Complex and ICD, Jaipur during 01.01.2000 to 05.08.2004 by **M/s Rochi Ram & Sons, Jaipur** was rejected and PMV as Rs.4,11,95,555/- was determined under Section 14(1) of the Customs Act, 1962 for the purpose of determination of DEPB benefit by the competent authority.

(2) 'Quartz analog wristwatches' of which PMV determined as Rs.4,11,95,555/- (Declared FOB value of Rs.15,55,48,124/-) were confiscated under Section 113(d) & (i) of the Customs Act, 1962 and such goods having been exported and not available for confiscation, Redemption fine of Rs.1,84,51,000/- (Rs. One Crore Eighty Four Lakhs Fifty One thousand only) was imposed on M/s. Rochi Ram & Sons, Jaipur, *in lieu* of confiscation under Section 125 of the Act.

st.

(3) Penalty of Rs.4,12,00,000/- (Rupees Four Crores Twelve Lakhs only) was imposed on M/s Rochi Ram & Sons, Jaipur under Section 114 (i) & (iii) of the Customs Act, 1962.

APPEAL NO. C/558/2011
M/s.Jaipur Time Industries

(1) Declared FOB value Rs.9,87,62,865/- in respect of 'quartz analogue wristwatches' exported from Air Cargo Complex/ ICDs, Jaipur during 01.01.2000 to 05.08.2004 by **M/s. Jaipur Time Industries** was rejected and the PMV was determined as Rs.2,51,03,300/- under Section 14(1) of the Customs Act, 1962 for the purpose of determination of DEPB benefit by the competent authority.

(2) 'Quartz analog wrist watches' of which PMV determined as Rs.2,51,03,300/- (Declared FOB value of Rs.9,87,62,865/-) were confiscated under Section 113 (d) & (i) of the Customs Act, 1962 and such goods having been exported and not available for confiscation, Redemption fine of Rs.1,27,00,000/- (Rupees One Crore Twenty Seven Lakhs only) was imposed on M/s Jaipur Time Industries, Jaipur in lieu of confiscation under Section 125 of the Act.

(3) Penalty of Rs.2,52,00,000/- (Rupees Two Crores Fifty Two Lakhs only) was imposed on M/s. Jaipur Time Industries, Jaipur under Section 114 (i) and (iii) of the Customs Ac, 1962.

Appeal No. C/557/2011
M/s. Rajasthan Watch Manufacturers

(1) Declared FOB value Rs.10,52,01,906/- in respect of 'Quartz analog wrist watches exported from Air Cargo Complex/ICDs, Jaipur during 01.01.2000 to 05.08.2004 by **M/s. Rajasthan Watch**

22.

Manufacturers, Jaipur was rejected at PMV was determined as Rs.2,74,85,687/- under Section 14(1) of the Customs Act, 1962 for the purpose of determination of DEPB benefit of the competent authority.

(2) 'Quartz analog wristwatches' of which PMV determined as - Rs.2,74,85,687/- (Declared FOB value of Rs.10,52,01,906/-) under Section 113(d) & (i) of the Customs Act, 1962 were confiscated the goods having been exported and are not available for confiscation, Redemption fine of Rs.1,31,21,000 (Rupees One Crore Thirty One lakhs Twenty One Thousand only)/-, was imposed on M/s. Rajasthan Watch Manufacturers, Jaipur *in lieu* of confiscation under Section 125 of the Act.

(3) Penalty of Rs.2,75,00,000/- (Rupees Two Crores Seventy Five Lakhs only) was imposed on M/s. Rajasthan Watch Manufacturers, Jaipur under Section 114 (i) & (iii) of the Customs Act, 1962.

APPEAL NO. C/559/2011
M/s. India Watch Parts Manufacturers

(1) Declared FOB value Rs.8,20,71,770/-/- in respect of 'Quartz analog wristwatches' exported from Air Cargo Complex/ ICDs, Jaipur during 01.01.2000 to 01.01.2000 to 05.08.2004 by M/s. India Watch Parts Manufacturers, Jaipur was rejected and PMV was determined as Rs.1,91,49,228/- - under Section 14(1) of the Customs Act, 1962 for the purpose of determination of DEPB benefit by the competent authority.

96

(2) 'Quartz analog wristwatches' of which PMV determined as Rs.1,91,49,228/- (Declared FOB value of Rs.8,20,71,770/-) under Section 113(d) & (i) of the Customs Act, 1962 were confiscated and such goods having been exported and not available for confiscation, Redemption fine of Rs.1,13,96,000/- (Rupees One Crore Thirteen Lakhs Ninety Six Thousand only) was imposed on M/s. India Watch Parts Manufacturers, Jaipur *in lieu* of confiscation under Section 125 of the Act.

(3) Penalty of Rs.1,92,00,0000/- (Rupees One Crore Ninety Two Lakhs only) was imposed on M/s. India watch Parts Manufacturers, Jaipur under Section 114 (i) & (iii) of the Customs Act, 1962.

CUSTOMS APPEAL No. C/560/2011
M/s. HMD Exim Pvt. Ltd.

(1) Declared FOB value Rs.5,76,25,800/- in respect of 'Quartz analog wristwatches' exported from Air Cargo Complex/ICDs, Jaipur during 01.01.2000 to 05.08.2004 by, Jaipur was rejected and PMV was determined as Rs.1,59,00,000/- under Section 14(1) of the Customs Act, 1962 for the purpose of determination of DEPB benefit by the competent authority.

(2) 'Quartz analog wristwatches' of which PMV determined as Rs.1,59,00,000/- (Declared FOB value of Rs.5,76,25,800/-) were confiscated under Section 113(d) & (i) of the Customs Act, 1962 and such goods having been exported and not available for confiscation, Redemption fine of Rs.71,91,000/- (Rupees Seventy One Lakhs Ninety One Thousand only) was imposed on M/s. HMD Exim Pvt. Ltd., Jaipur *in lieu* of confiscation under Section 125 of the Act.

St.

(3) Penalty of Rs.1,60,00,000/- (Rupees One Cr ore Sixty Lakhs only) on M/s HMI) was imposed on Exim Pvt. Ltd. Jaipur under Section 114 (1) & (iii) of the Customs Act, 1962.

APPEAL No. C/556/2011
M/s Prakash Sales Agency, Jaipur

(1) Declared FOB value Rs.64,56,456/- in respect of Quartz analog wristwatches' exported from Air Cargo Complex, Jaipur during 01.01.2000 to 05.08.2004 by M/s Prakash Sales Agency, Jaipur was rejected and PMV was determined as Rs.19,04,000/- under Section 14(1) of the Customs Act, 1962 for the purpose of determination of DEPB benefit by the competent authority.

(2) 'Quartz analog wristwatches' of which PMV determined as Rs.19,04,000/- (Declared - FOB value of Rs.64,56,456/-) under Section 113(d) & (i) of the Customs Act, 1962 were confiscated and such goods having been exported and not available for confiscation, Redemption fine of Rs.7,03,000/- (Rupees Seven Lakhs Three Thousands only) was imposed on M/s. Prakash Sales Agency, Jaipur *in lieu* of confiscation under Section 125 of the Act.

(3) Penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only) was imposed on Mis Prakash Sales Agency, Jaipur under Section 114 (i) 86 of the Customs Act, 1962.

APPEAL No. C/547/2011
Shri Hargun Das Nebhnani

(1) Penalty of Rs.50,00,000/- (Rupees Fifty Lakhs only) was imposed on **Shri Hargun Das Nebhnani**, Director/Partner of M/s. HMD Exim Pvt. Ltd., and M/s. Prakash Sales Agency, Jaipur under Section 114(i) & (iii) of the Customs Act, 1962.

St.

In addition to the aforesaid consequences, the Bonds & Bank guarantees executed by the appellants for release of unutilized DEPB scrips was directed to be enforced by the competent authority after confirmation of recovery of excess availed DEPB credit.

SUBMISSIONS OF APPELLANTS:-

2.1 This batch of appeals when earlier listed along with other batch of appeals in **S.No.14 to 69 of the cause list**, came up on 17.07.2014, Shri L.P. Asthana, Id. Advocate appearing in respect of importer appellants in **Appeal Nos. C/201-240/2011 (at Sl. No. 14 to 53** of the said cause list submitted that such appeals question Jurisdiction of DRI which is an issue pending before Hon'ble High Court of Delhi in case of Mangli Impex Case in W.P. (C) No. 441/2013, Shri K.K. Anand, Id. Advocate appearing on behalf of exporter appellants in Appeal Nos. **C/244-60/2011** and **Appeal Nos. C/544-547/2011** and C/556-561/2011 (at Sl. No. 55 to 69 of cause list of 17.7.2014), suggested that the exporter appellants in S/544-547 & 556 to 561/2011-CU[DB] may be heard first to save time of the court since exporter appellants have not raised jurisdiction issue and the cases of importers have also no bearing on the cases of exporters in these appeals. Revenue having no objection to such proposition, hearing proceeded and day-to-day proceedings were recorded in the open court and copies thereof given to both sides.

2.2 Preliminary enquiry was made from Shri K.K. Anand, learned Advocate as to what was the allegation of Revenue against the exporter appellants. He explained that exports of different types of watches made during the **period 1.1.2000 to 5.8.2004** are alleged

Sl.

to have been overvalued making undue claim of **DEPB benefit of Rs.13.18 crores** and that is not admissible to the appellant. Similarly such allegation is also made in respect of 8 live shipping bills as depicted in the Table herein before. Shri Anand further explained that there were **321 consignments** exported during that period. Such export consisted **8 (eight) live** consignments and **313 past consignments. All these consignments were suspiciously investigated. 29** past export consignments **were subject to provisional assessment** and such assessments were also **finalized subsequently**. But Revenue has denied the DEPB benefit on baseless allegation of over-valuation of exports and some of the importers were **related parties to the exporter appellants**. DEPB claim has been restricted to the figure adjudicated.

2.3 According to the appellants, the consequence of the allegation is mainly four fold. **First** one is denial of amount of DEPB claimed, the **second** one is confiscation of live as well as past consignments, the **third** consequence is rejection of the FOB value declared by appellant exporters and **fourthly** imposition of penalty and confiscation which is unwarranted.

2.4 Appellants submitted that Market enquiry was made by Revenue to ascertain PMV of the aforesaid exports while exporting, all the shipping bills were accompanied by the cost statements. But **Revenue adopted cost construction** method to reduce the FOB declared and DEPB claimed is reduced arbitrary, determining low cost of manufacture. Such approach has been followed against **live as well as past** consignments.

sf.

2.5 Panchnamas were drawn by investigating team only in respect of **one live** consignment while no such panchnama drawn in respect of **seven other live consignments**. Samples drawn also varied with the inventories recorded in the panchnama. So also the samples were sent openly without being sent in sealed cover. Revenue objected to such plea. But Id. counsel for the appellants replied that the Miscellaneous Applications have been filed in the cases of M/s. Rochees Watches Pvt. Ltd. as Application No. **C/MISC/55810/2014**, M/s. Prakash Sales Agency as Application No. **C/MISC/55840/2014**, M/s. Rajasthan Watch Manufacturers as Application No. **C/MISC/55811/2014**, M/s. Jaipur Time Industries as Application No. **C/MISC/55812/2014**, M/s. India Watch Parts Manufacturers. as Application No. **C/MISC/55813/2014** and M/s. HMD Exim Pvt. Ltd. as Application No. **C/MISC/ 55841/2014** to bring certain additional grounds of appeal to record.

2.6 Against the query whether any Panchnama was prepared in respect of the goods seized **at ICD**, Id. SDR explained that 2 Panchnama were prepared. One was for goods seized at **Air Cargo** Station and the other was in respect of the goods seized at the **ICD**, Jaipur. Copies thereof were given to appellants. But Id. Counsel stated that such copies were not given to the appellant prior to hearing the appeal by Tribunal. Id. DR further explained that the envelope contained samples of goods seized at **Air Cargo** covered by **Shipping Bill Nos. 1002 and 1003 both dated 21/08/2004** meant for market enquiry and Appellant was aware of such fact. Hence, the sample drawn at both places cannot be questioned by the appellant nor market enquiry assailable. But Id. Counsel objected to such

g.

practice on the ground that appellants were also entitled to have a set of samples with description thereof for their future reference and guidance. Without that there was a violation of Principles of natural justice.

2.7 Placing reliance on **page 10 of the volume 1 of paper book**, Id. Counsel argued that watch samples were sent to "**H.C. Brothers**" to ascertain market value thereof. But that concern was not trader of watches. Hence, **market value suggested by that concern is not acceptable to law. The reference made to that concern did not contain the model number and description of the watch meant for reporting. Further, when cross-examination of "H.C. Brothers" as well as the officer** who were incharge of testing, was asked by the appellant, that **was denied. That concern having no experience of dealing with watch, report of that concern is unreliable and unusable in adjudication.**

2.8 Placing reliance on **page 11 of volume 2 of paper book**, Id. Counsel further submitted that the testing done by the concern mentioned therein also suffered from deficiency. When **such concern as well as officers were required to be cross-examined, that was not allowed.**

2.9 Placing reliance on **page 12 and 13 of the Volume 2 of paper book**, similar objection was raised by Id. Counsel on the ground that both pages were **identically typed** and prices were written by parties in hand as required by customs officers. **Cross-examination of the persons who examined the goods and the officers who were involved in the process were not allowed.** That violated the

26.

principles of natural justice. It was further submitted by appellant that **Thakur Das Khatri and Sons** whose name appeared on **page 11 and 13 of the above paper book**, filed affidavit averring that they signed the report **according to the will of the officers who brought the goods for examination**. Similar affidavit was also from **Manohar Lal, Ratilal Lodhia** of Rama Watch Industries (**page 88 of paper book volume-1**). Such affidavits were ignored to the detriment of justice. Accordingly, when Authors of the market report appearing at page nos. **10, 11, 12, 13 and 88 of the above paper book** were requested for cross-examination, that was not allowed. Therefore, result of market enquiry report cannot be used against the appellants being done behind their back. To support such contention, reliance was placed on the following decisions:

S. NO.	Parties	Citations
1.	State of Kerela Vs. KT Shaduli Grocery Dealers etc	1977 (2) SCC 797 Para 5
2.	Kisan Chand Chelaram Vs. CIT	1980 (Supplementary) SCC 660 Ref: para 6 (7)
3.	Bhushan Bhandaar	2002 (143) ELT 25 Supreme Court
4.	Lakhan Exports Ltd. Vs. CCE	2002 (143) ELT 21 Supreme Court
5.	CC New Delhi Vs. Punjab Steel Industries	2001 (132) ELT 10 Supreme Court

2.10 Relying on **para 7** of the judgment in **Kishan Chand Chelaram Vs. CIT – 1980 (supp) SCC 660**, it was submitted on behalf of the appellant that burden of proof was on Revenue to show that the goods meant for examination were done in accordance with law. But, Revenue failed to discharge such burden for which the result of enquiry became inadmissible in evidence.

28.

2.11 It was further submitted on behalf of the appellant that **page 262, 263, 265, 266 and 267 of volume 2 of the paper book** shows summarily how market enquiry suffered from legal infirmity.

- 1. Model no. of the watch not given.**
- 2. Value arrived was not on the basis of the part used therein like movement.**
- 3. Neither appellant nor authorised representative of appellant of Revenue were present in the course of examination.**
- 4. Cross examination of the examiner and officers engaged in examination was denied.**
- 5. Report issued by Titan does not disclose the manner of examination conducted.**
- 6. Samples tested did not corroborate with the samples taken at the time of seizure.**

2.12 Revenue represented by Shri Amresh Jain, preliminary submitted that all the export consignments were covered by DEPB claim. When cost construction of goods exported was worked out, that revealed **over-valuation thereof was proved**. Cost of manufacture shown by appellant was very high and false. Appellants claimed exports of gold plated component watches falsely overvaluing FOB thereof in order to make undue claim of DEPB. This fact was corroborated from overseas enquiries and it was established that **revenue was defrauded**. Objecting to such averment Revenue, Id. Counsel for the exporter appellants submitted that there existed a gold register maintained by appellant which proved the usage of gold in making watch components. **That gold register was seized by**

26.

Revenue and given back later to the appellants. Such evidence deserves consideration by Tribunal.

3. Shri Amresh Jain, Id. Departmental Representative submitted that following material facts contributed to the demand:-

(i) *M/s. Rochees Watches Pvt. Ltd. in Appeal No.C/544/2011 was manufacturer appellant and the appellants **Shri Ishwar Das Moolrajani in Appeal No.C/545/2011** as well as the appellant **Shri Nanak Das Moolrajani in Appeal No.C/546/2011** were directors of M/s. Rochees Watches Pvt. Ltd.*

(ii) *Shri Hargun Das Nebhnani in Appeal No.C/547/2011 was an employee of **M/s. Motilal Watch Co. at Jaipur owned by Shri Ishwar Das Moolrajani** as proprietor. That concern is not in appeal.*

(iii) ***M/s. Prakash Sales Agency in Appeal No.C/556/2011, M/s. Rajasthan Watch Manufacturers in Appeal No.C/557/2011, M/s. Jaipur Time Industries in Appeal No.C/558/2011, M/s. India Watch Parts Manufacturers in Appeal No.C/559/2011, M/s. HMD Exim Private Ltd. in Appeal No.C/560/2011 and M/s. Rochi Ram & Sons in Appeal No.C/561/2011** were merchant exporters of watches manufactured by M/s. Rochees Watches Pvt. Ltd.*

(iv) *Substantial exports were made to **Dubai, London and Hong Kong**. At all three places, the importers were found to be **related persons** of either **Shri Ishwar Das Moolrajani in Appeal No.C/545/2011** or **Shri Nanak Das Moolrajani in Appeal No.C/546/2011**.*

(v) *The **exports were overvalued** to make undue claim of DEPB and such overvalued goods were found to be*

8.

established from the market enquiry made with the traders, exporters, trade associations and the leading watch manufacturers, **M/s. Titan Industries** dealing with watches. The market enquiry revealed that the value of watches exported was **Rs.50/- to Rs.60/-** as informed by the traders. Trade association revealed that the value of exported watches was **Rs.60/- to Rs.70/-**. Exporters of such goods at Rajkot revealed the value to be **Rs.100/- to Rs.150/-**. The trade association in Delhi revealed the market value would be **Rs.40/- to Rs.85/-**. M/s. Titan Industries replied that the value to be **Rs.100/- to Rs.125/-**.

(vi) **None of the watches exported were of any high value to support the claim of over valuation made by the manufacturer. 10% of the manufactured goods were sold domestically and balance were exported.** The 10% sale related to the model "Roche". But **export models were "Genera", "Yasoda" "Rivera" and "Star", etc.**

(vii) **Overseas enquiries** revealed that there was declaration of very low value of export to **Dubai** and London and Hong Kong.

(viii) The mis-declaration of the value made by the appellant was the modus operandi to claim higher duty **draw back ranging 18%, 16%, 13% and 10% at relevant point of time.**

(ix) It was convenient for the exporter manufacturer **M/s. Rochees Watches Pvt. Ltd.** to make a mis-declaration because **the importers in Dubai, London and Hong Kong were related persons of Shri Ishwar Das Moolrajani and Shri Nanak Das Moolrajani**, who were the Directors of the appellant company as above.

96.

(x) *Some of the goods, which were sent to **Spain**, established that very low value was coming from Spain to Dubai, as declared to Dubai customs, whereas, higher value was declared to Indian customs and such value was remitted from Dubai. Investigation precisely found out that the value declared to Dubai customs was 1/10 of the value declared to Indian customs. There was over-valuation of the goods compared to quality of the goods exported and the market value thereof was found to be very low.*

(xi) *Merchant exporters in who appeared in Sl. No. 51 to 56 of cause list in Appeal Nos. C/556/2011 to C/561/2011 were the **name-lenders to M/s. Rochees Watches Pvt. Ltd.** They formed part of group of the manufacture exporter appellants. They were all **operating from the campus of M/s. Rochees Watches Pvt. Ltd** having no place of business of their own. Those six merchant exporters were dummy of M/s. Rochees Watches Pvt. Ltd.*

4.1 Ld. Counsel urged that Customs Authority have no power to decide on DEPB issue since DGFT is the Authority on that subject. Market enquiry to ascertain **PMV** was unwarranted since **value Cap was prescribed in respect of the goods exports at the relevant point of time.** DEPB is a fiscal incentive and that it has no character of duty. Appellants were governed partly by the **Trade policy of 1997-2002 and 2002-2007.** Relying on **para 7.36 (i) (A) of the 1997-2002 policy,** it was submitted that when rate of DEPB was 10%, claim thereof was limited to 50% of PMV. **Serial No. 30 at page 68 of volume 1 of paper book** covered watches exported by the appellant **with a value Cap prescribed at the relevant point of time.** The rate of DEBP has gone on changing as depicted in **page 77**

5.

of volume 1 of the case law paper book filed in the course of hearing. **Monitoring of DEPB claim was left to the jurisdiction of the DGFT. If Customs** Authority were dissatisfied with the PMV declared they were at liberty to **refer the case to DGFT** without having any power to initiate proceeding against the exporter. Failing to do so is contravention of the provisions of the Trade Policy. Even if demand on account of DEPB arises, that is not recoverable under the present provisions of Customs Act, 1962 in absence of power conferred on the Customs Authority to make such recovery. Power for recovery of **draw back** claimed erroneously is vested with Customs under Rule 16 and 16A of draw back Rules 1995. But similar such power is not vested on Customs to recover DEPB.

4.2 Placing **Circular No.697/97-Cus. dated 8.12.1997 and No. 27/2008-Cus dated 5/04/2000**, it was emphatically submitted on behalf of the appellant that Present Market Value (PMV) need not be verified where value Cap is prescribed for the obvious reason that any **DEPB claim over and above value Cap is in admissible**. He further submitted that till date, **DGFT has not initiated any proceeding against the appellants** alleging erroneous DEPB claim. **Therefore, no proceeding by Customs can be initiated.**

4.3 Relying on para 4 of the decision in the case of **Adani Export Limited Vs. ACC-Cochin-2006 (199) ELT 613 - (Tri-BNG)** it was submitted that when DGFT has no objection to the DEPB claim of the appellant, adjudication is unsustainable. He further relied on the decision in the case of **Ramma Patia Exports Vs. CC (Kol)-2006 (203) ELT 107 (Tri-Kol.)**, to submit that DGFT is the only authority to grant export incentive. Inviting attention to **page 910 of**

8.

the volume 4 of the paper book exhibiting, para 55.5 of show cause notice, it was that in absence of provision in Customs law, the Customs Authority **has even no power to reduce the DEPB** claim and direct recovery thereof from the appellants. It was further submitted that in the case of *Hindustan Liver Vs C.C. Customs (EP) Mumbai-2012 (28) E.L.T. 241 (Tri-Mum.)*, it has been held that Customs authority has no jurisdiction on DEPB issues which is the domain of DGFT. Also relied on the decision in the case of *Pradip Polyfils Pvt. Ltd. Vs. UOI-2004 (173) E.L.T. 3 (Bom.)* for such proposition.

5.1 On the point of **cost of production**, it was submitted by the appellants that FOB declared to customs in respect of 8 (eight) live consignments finds place at **page 923 of vol.4 of paper book (page 5 of the show cause notice)**. Examining the elements constituting the FOB value declared a cost sheet was filed on **31/08/2004** (Ref: Para 5 of SCN). Reference may be made to **page 850 of vol.4 of the paper book (page 11 of SCN)**. Thereafter, reviewing the elements of the cost of manufacture, the appellant further revised cost sheet on **10/09/2004**. Such chart finds place at **page 850 of the volume 4 of paper book** (page 18 of SCN) read with page 11 of SCN. The original cost sharing manufacture filed on **31/08/2004** (para 5 of SCN), was **first revised on 10.09.2014** and was **lastly revised on 24/09/2004**. The last revised statement **exhibited correct FOB** which should not be disturbed.

5.2 Explaining cost revision, it was submitted by Appellants that the reasons of revision and the manner of determination of cost of

g.

manufacture of watches was explained by the appellant in reply to show cause notice at **page 586 of volume 3 of the paper book**. That depicts various reason why the FOB finally declared on **24/09/2004** by appellant was considerable. Added to that, the appellant also placed **page 588 of the volume 3 of the paper book** to explain that the analytical report appearing in that page discloses use of gold and existence of the **gold content in the components** of the watches justifying the value declared finally on **24/09/2004**. It was emphatically submitted that there were three types of watches exported which were:-

- 1. Watches with leather strap**
- 2. Watches with metal band**
- 3. Watches with metal band, bracelet in box.**

All the above three types of watches exported have **gold components**. Therefore, the cost of manufacture of watches is to be understood in the light of the submissions made at **page 586 to 588 of the volume 3 of the paper book** explaining in detail the various factors contributing to higher FOB.

5.3. Use of gold in the watch components meant for export was further explained by appellant stating that when an inventory was made on **14/09/2004** (Ref: Annex-A to the Panchnama drawn specifically) that exhibited that gold plated watches were inventorised by the investigating team. **Page 122 of volume 1 of paper book** explains this position. Therefore, revenue cannot doubt use of gold for **Acid touch in the watch components**. During course of inventory made on **14/09/2004**, certain samples of watch cases were kept in

8.

open cover to send for testing. Sealing procedure was not followed. Once such procedure is not followed, the test report obtained by Revenue becomes unreliable. For no cross examination allowed, the test result cannot be used against appellant.

6. It was further submission of the appellants that Customs has no power to determine cost of manufacture to arrive at the FOB. This was held in **C.C. Kandla Vs. Crown International-2006 (203) E.L.T. 120 (Tri-Mum)**. Similarly the cost of manufacture has no relevance for the purpose of section 14 of Customs Act, 1962. The only fact necessary is to examine whether transaction value was rightly declared. Selling price of manufactured goods is irrelevant to determine the **FOB**. **PMV** and **FOB** are different concepts altogether and **FOB** and **PMV** should not be confused because both are different as has been held by Tribunal in the case of **PEE AAR Exim Vs. C.C. Amritsar-2012-TIOL-1960-CESTAT-DEL** serving different purposes in the trade. To further submit that **FOB** and **PMV** are different and **PMV** does not determine **FOB** value of export, reliance was placed on decision of **Kanak Metal Industries Vs. C.C. Jodhpur – 2012 (275) E.L.T. 115 (Tri-Del)**. That decision was maintained by Apex Court in the case reported **in 2013 (293) E.L.T. 825 (SC)**. In this case also meaning of **PMV** and **FOB** was explained. **FOB** is considered **for grant of DEPB**. Whereas **PMV is the value which is the sale price of the goods in the domestic market**. The **FOB** may certainly vary with **PMV** because **FOB** includes profit expected on exports.

7. Ld. Counsel placing page **199 to page 224 of volume 1 of paper book** submitted that visit by the officials to the factory

8.

premises of the appellant on **22/09/2004** resulted with inventory of **22,024 gold plated unfinished watch cases**. Such cases were found without any identification mark since those were semi finished goods. Out of **22024** number of watch cases found, **135 samples** were taken and those were packed in three different cartons containing 45 samples each. Those cartons were sealed and two samples out of the **inventory** made on **14/09/2004** and **22/09/2004** were sent by the investigation team for testing to **Titan** and **Sarfa Traders, Jaipur**. Test report disclosed that the cases were **acid touch gold** plated. The mark **"TG & MG"** contained in those samples. **The process of sampling followed by investigation was neither proper nor the testing was done according to law. Appellant was not given samples for its future guidance.**

8.1 Appellant further submitted that the **FOB declared** on the shipping bills **were realised**. Therefore, that left no doubt as to the truthfulness of the **FOB** declared. Rejection of the **transaction value** declared by the appellant was not in consonance with law laid down by the apex court in the case of **Siddachalam Export Pvt. Ltd. Vs. C.C.E Delhi-III – 2011 (267) E.L.T. 3 (SC)**. Placing **para 19** of the judgement, Id. Counsel says that **once transaction value is rejected under rule 4 of the Custom Valuation Rules, 1988, Rule 5,6,7 & 8 of these rules are to be applied in sequence. But that was not done. Abruptly Rule 10 of the said Valuation Rules was applied. Such arbitrary application was illegal.** Id. Authority neither rejected transaction value nor applied Rule 5,6,7 & 8 of Valuation Rules sequentially to pass order in accordance with law.

28.

8.2 According to the appellants, when FOB values were realized, PMV is not questionable since FOB is transaction value which was duly verified by customs authorities at the time of export of goods without questioning. Customs Authorities **made 29 provisional assessments** and found nothing contrary to law for which **28 provisional assessments were** finalized unquestionably. However, **in one case** DEPB was reduced which is verifiable from **page 690 of volume-III of paper book. Page 649 onwards of volume-III of the paper book** brings out the case of provisional assessment. **Page 64 of volume-III** establishes full proof case of verification of PMV to finalize provisional assessment. Appellants reiterated that **FOB and PMV are not one and the same** relying on (para nos.6, 7,9 and 16) of the decision of Tribunal in the case of **Frost International Ltd. vs.CC (Exports) -2006 (206) ELT 451 (Tri.-Mum.)** in this regard. Decision in Frost International Ltd. was maintained by the Supreme Court as reported **2007 (215) ELT A103 (SC).**

8.3 Appellants further relied on the decision of Tribunal in the case of CC (Exports), Mumbai vs. Unimac (India) Ltd.-**2006 (204) ELT 95 (Tri.-Mum.)** to support that **FOB value of export price cannot be determined with reference to market price in India.** It was submitted that the moment the FOB is questioned by the Customs Authorities, burden of proof lies on them to prove that there was mis-declaration. For this proposition, he relied on the decision in the case of **Advance Export vs. CC, Kandla-2007 (218) ELT 39 (Tri.- Ahmd.).**



8.4 It was submitted by appellants that when the **entire FOB value was realised and foreign remittances came to India**, the FOB values appearing in shipping bills do not call for disturbance. This also establishes that appellant followed transaction value principle for export. For such proposition, reliance was placed on the decision of Tribunal in the case of *Ajay Apparels vs. CC (Port), Kolkata-2006 (204) ELT 131 (Tri.-Kolkata) (para 3.1 to 3.3 and para 4)*. Further reliance was placed on the decision of the Tribunal in the case of *CC, Kandla vs. Dimple Overseas-2005 (190) ELT 58 (Tri.-Mum.I) (para 2.4)* to support that declaration given to Dubai Customs shall not *ipso facto* become basis to disturb FOB value declared by appellants and such value realised through banking channels in India. Appellant further relied on the decision of the Tribunal in the case of *Riben International vs. CC, Bangalore-2006 (198) ELT 55 (Tri.-Bang.)*, where the Tribunal held that any declaration by importer in the importing country does not bind on the Customs authority of exporting country. Therefore, the appellant cannot be questioned on the value declared at the importing port to cause prejudice to the appellants.

9.1 So far as past consignments are concerned, Id. Counsel submitted that the Officer who was in the Consulate General of India in Dubai sent a report on **19/06/2005** in respect of past exports was Adjudicating Authority and became Judge of his own cause which is violative of principle of natural justice. He further submitted that show cause notice was not issued **under section 28 of Customs Act, 1962 since no duty was recoverable** from the appellants. He reiterated that DEPB not being duty at all, section 28 is not applicable

8.

to the present case. He explained that section 14(1) of Customs Act, 1962 was invoked in adjudication **without proposal in that regard in the show cause notice** which is foundation for adjudication. Therefore, adjudication made without allegation in the show cause notice is bad. He relies on the following decision for such proposition:-

- (1) CCE, Nagpur vs. Ballapur Industries Ltd.-**2007 (215) ELT 489 (SC) (Para 21)**
- (2) CC, Mumbai vs. Toyo Engineering India Ltd.-**2006 (201) ELT 513 (SC) (para 16)**
- (3) CCE vs. Gas Authority of India Ltd.-**2008 (232) ELT 7 (SC) (para 7 & 8)**

9.2. To argue that evidence gathered for clearance of live consignments cannot be applied to past consignments, appellant relied on decision of Apex Court in the case of **Oudh Sugar Mills Ltd. vs. Union of India-1978 (2) ELT J-172 (SC)**. Further, reliance was placed on the decision in the case of **State of Kerala vs. C** ---1966 62 ITR 236 (para 10 & 11) of **volume-II of paper book page no.370-373** to support the contention that **there cannot be presumption** when all facts and circumstances of each case are different. Presumption of existence of similar factual situation and circumstances causes prejudice to the interest of justice. Therefore, without cogent evidence brought by the Customs authorities to prove that past consignments were misdeclared, there is no scope to deal such consignments in par with live consignments.

10.1 Appellants further submitted that while making watches the appellant had used gold in some of the components used therein. Gold purchase were recorded in gold register called **salt register** by

26.

the appellant.(Ref: to **Volume No.10 of the paper book**). Statements were recorded about the use of gold and such use is verifiable from the salt register. Maintenance of salt register is verifiable from the para 11 of the show cause notice at **page 848 of the volume IV of the paper book**. That register was examined by the customs authorities and contents thereof verified from the statement of Sri Iswar Das (para 12 and 13 of the show cause notice). All statements recorded by customs authorities were exculpatory and cannot be used against the appellants.

10.2 Placing reliance on para 17 of show cause notice (**page 13 of SC, page 892 of volume-IV of paper book**), it was submitted on behalf of the appellants that consumption of gold was established from **8 live consignments** since gold was found to have been used therein. Past consignments not being available with the department and no testing being done, **there cannot be presumption that some of the components of the watches did not contain gold.**

11.1 Explaining the cost of manufacture of watches, cost sheet was submitted on **23.1.2003** which reflected use of gold in making watch components. That was corroborated by statement recorded from different persons. **Page 20 of show cause notice** shows export of gold plated watches. Similarly **page 22 of SCN (page 862 of volume-IV)** depicts that cost sheet containing use of gold in the manufacture of gold plated watches. All such facts establish use of gold in manufacture of watch components.

11.2 Authorities conveniently ignored the gold (salt) register for the reason best know to them while it was specifically recorded in

2.

paras 11, 12 and 13 of the SCN as to **use of gold** in making watch components. When purchase of gold was accounted for and appeared in the financial statement of appellant-exporter, use of gold in watch components cannot be denied. There shall be no presumption that gold was not used in the watch components.

11.3 It was further submitted that by the appellant that once use of gold remained unrebutted by Revenue without leading contrary evidence and manufacturing account showed use of gold in the watch components, financial statements were reliable. Reliance was placed on the decision of Gujarat High Court in CC, Daman Vs Vs. Narendra Impex-**2011 (265) ELT 332 (Guj.)** in this regard.

12. When realisation of entire FOB, purchase of gold and use thereof remained unquestioned, books of accounts of appellants were reliable. Therefore, Revenue's contention that FOB value was inflated is baseless. **Paper book 12 contains financial statement** disclosing purchase, sale of gold and stock maintained. That was un-rebutted by revenue. Law is settled that declaration before one authority under one statute cannot be challenged by another authority under different statute. When books of accounts were audited by chartered accountant and report thereon submitted, figures were conclusive. That cannot be challenged by the Customs authorities without finding any discrepancy or material irregularity in the figures. Appellants relied on the decision in the case of **ITC Ltd. Vs. CCE -2004 (171) ELT 433 (SC) (para 48)** to make such proposition.

13.1 On the issue of **oversea enquiry**, it was reiterated by the appellant that the officer who conducted enquiry abroad was

g.

adjudicating authority. But Revenue objected to such stand on the ground that this issue was not before the authorities below. Appellant did not press such plea further. However, appellant pleaded that market enquiry report relied by that officer is contrary to law since no one could be judge of his own cause.

13.2 Placing reliance on page **504-506** of **volume-II of the paper** book, it was submitted by Appellants that unsigned and unauthenticated documents were appearing therein. Such documents are **not evidence** and **cannot be used** against the appellants. These were not annexed to letter dated 19.6.2008 of the Counsel General of Dubai addressed to DG, DRI, India. That has **no relevance in law not being authenticated documents and cannot be used against the appellants**. Placing reliance on **page 467 to 486**, it was submitted that those papers do not establish any fact in absence of authenticity. Similarly **page 471 onwards** being in Spanish language but **not in English, those papers have no evidentiary value**. Use of papers in the adjudication is detrimental to the interest of justice. Decision rendered in the case of **Ajay Apparels and Dimple Impex** were reiterated. Appellants further submission was that there was no adverse report other than **58 cases covered by the overseas enquiry communications which are *ab initio* void**.

14. On the point of time bar, appellant placing reliance on **circular no.69/97-Cus dt.8.12.97** (para 7), **circular No.79/98-Cus dt.22.10.98** and **circular no.23/99-Cus dt.11.5.99**, submitted that CBE&C intended that **30 days** period, thereafter 90 days period and thereafter **reasonably extended period** were

26.

prescribed to be **limitation to conduct enquiry into PMV**. Subsequently **circular no.77/02-Cus dt.27.11.2002** was issued to deal with cases of fraud, collusion, etc. Therefore, authority should have followed Board's instruction. Placing reliance **on page 412 of volume-II** of paper book, appellants' submission was that enquiry should be done within reasonable period which is the law laid down by Apex Court in the case of **State of Punjab vs. Batinda District Co-operative Mills-2007 (217) ELT 325 (SC)**, CCE, Chandigarh Vs. Hari Concast P.Ltd.-**2009 (242) ELT 12 (P&H)**, **CCE & C, Vadodara-II vs. Orbit Fabrics Ltd.-2011 (264) ELT 53 (Guj.)**. It was also submitted that once assessment is finalized that cannot be reopened. Such principle is repeatedly followed by Tribunal in the case of **CC (Imports), Mumbai vs. Lord Shiva Overseas-2005 (181) ELT 213 (Tri.-Mum.)** and in the case of **Vitesse Export Import vs. CC (EP), Mumbai-2008 (224) ELT 241 (Tri.-Mum.)**.

15. On the point of confiscation, it was submitted that past consignments are not confiscable **since such consignments were cleared without any bond or bank guarantee**. Appellant relied on the larger bench decision of the Tribunal in the case of **Shiv Kripa Ispat Pvt. Ltd. vs. CCE & C, Nasik-2009 (235) ELT 623 (Tri.-LB)** and judgement of High Court of Punjab and Haryana in the case of **Raja Impex Pvt.Ltd.-2008 (229) ELT 185 (P&H)** in this regard. Ld. Counsel further submitted that ratio of these decisions was that when **goods were not cleared against bond and bank guarantee and such goods not available for confiscation shall not be confiscated**.

[Handwritten signature]

16. So far as imposition of penalty under **section 113(d)** of Customs Act 1962 is concerned, it was submitted that such provision shall not apply since the goods exported were **not prohibited goods**. Similarly so far as penalty under **section 113(i)** of Customs Act, 1962 is concerned, that shall be applicable to the case of the appellant only in the case of live **consignments** and **not to past consignments** and that too from the date when amendment to the law came into force.

17.1 On the question whether importers of Dubai were related persons of exporters, it was submitted on behalf of the appellants that valuation questioned in **para 46 of page 42 of Show Cause Notice (page 880 of Volume-IV of paper book)** has no basis **without disclosing manner in which parties were related** in SCN itself. In order to make allegation of related persons, it is essential for Revenue to show that there was mutual interest. Revenue was required to discharge its burden of proof. But it failed to do so. When Show Cause Notice nowhere depicts the manner of relation of parties and whether they were mutually benefited by virtue of their relation, if any. Therefore, Revenue misconceived the SCN.

17.2 None of the clauses of Valuation Rules, 1988 were invoked in the SCN nor violation of any of the valuation rules alleged. The only letter dated 19.06.2015 of Consulate appearing at **page 504 of Volume-II of paper book** depicts 51% shareholding by Shri **Dinesh Kumar Ramchand Moolrajani and his family members** without establishing that the foreign share-holders were related to Indian

8.

counterparts. That does not vitiate the valuation of goods declared by appellants.

17.3 Appellants submitted that Id. Commissioner **page 153 of order-in-original (page 753 of appeal folder)** alleged in that the importer and exporter were **interconnected undertaking** under Companies Act, 1956 while **no such allegation** was made in **Show Cause Notice** for which the **adjudication travelling beyond SCN is ill-founded**. Appellants relied on para 18 of the decision in the case of ***CC, Kolkata Vs. Initiating Explosive Systems (I) Ltd. [2008 (224) ELT 343 (SC)]*** and also the decision in the case of ***Heera Electronics Vs. CCE, Coimbatore [2006 (205) ELT 381 (Tri. – Chennai)]*** in this regard. According to appellant, **inter-connected undertaking allegation when did not appear on the SCN**, Id. authority should not have dealt such issues in the adjudication order. The allegation of related persons also failed to be proved by Revenue without discharging burden of proof as it has been held in para 15 in the case of ***Mirah Exports Pvt. Ltd. Vs. Collector of Customs [1998 (098) ELT 003 (SC)]***.

17.4 Appellants further submitted that the allegation of **inflation of FOB value has no basis** for the reason that similar watches **sold domestically fetched similar value as per price list submitted by appellants to Excise Authorities**. Such goods being liable to duty under section 4A of Central Excise Act, 1944 and Excise Authorities did not disturb the declared MRP. Therefore, when such value was rightly adopted for FOB, there cannot be further scope to disturb the FOB declared. Appellants having used gold components in

26.

the watches and submitted the price list to declare **MRP** to the authority and paid higher excise duty, the value so declared became transaction value which cannot be discarded. Since the value received from domestic sale remained unquestioned. That was also well explained in the statements recorded in clause 108 of Customs Act, 1962. Such value was reliable to be adopted as a FOB value.

17.5 Appellants also urged that Revenue's allegation that there was no domestic sale without any transport evidence is baseless. Revenue ignored the fact that **watches were not bulky goods** and can be transported without vehicles. Burden of proof to show that the goods were not capable of being transported without carrier was not discharged by Revenue. The allegation therefore fails in view of the principles laid down in the following judgements:-

- (i) ***Mirah Exports Pvt. Ltd. Vs. Collector of Customs [1998 (098) ELT 003 (SC)]*** (supra).
- (ii) ***CC, Calcutta Vs. South Indian Television Pvt. Ltd. [2007 (214) ELT (003) SC]***.
- (iii) ***Sounds N. Images Vs. Collector of Customs [2000 (117) ELT 538 (SC)]***.

18. It was further submitted by the Id. counsel for appellants that they had not acted *malafide* and whether their intention was *malafide* or not, guidelines given by the Hon'ble Supreme Court in paras 24 and 26 in the case of **Uniworth Textiles Vs. CCE, Raipur [2013 (288) ELT 161 (SC)]** applies. Ld. Adjudicating Authority had no regard to such principles laid down. But found fault baselessly. Similarly, when allegations were made on several grounds, failing to succeed on such grounds rendered the adjudication unsustainable following the ratio laid down in the case of **State of Maharashtra Vs.**

8.

BK Takkamose & Others [1967 (2) SCR 5383] (Ref para 14 at page 455 of case law compilation.) Also reliance was placed in ***Dhirajlal Giridharilal Vs. CIT [AIR 1955 SC 271]***.

19. Against the appeal by Merchant Exporters, Id. counsel submitted that entire **argument made in respect of the manufacturer exporter is adopted** and **when manufacturer exporter declared proper FOB, the merchant exporter shall not suffer.** The merchant exporters having paid proper value towards sales consideration to the manufacturer exporter without any flow back from one to the other, their **FOB remain unquestionable.**

20. On the issue of penalties imposed on all the appellants, it was submitted that once the confiscation fails to sustain, penalties are not impossible.

SUBMISSIONS ON BEHALF OF REVENUE

21.1 Per Contra, Id. Departmental Representative Shri Amresh Jain submitted that Customs Authority has jurisdiction to question exports under section 14 (1) of Customs Act, 1962 (hereinafter referred to as "the Act") read with section 2(41) thereof to determine the "value" of exported goods irrespective of any duty liability that may arise. Relevancy of value of export arises from reading of **section 50 of the Act.** Therefore, conjoint reading of **section 2(2), section 2(41), section 14 and section 50 of the Act** throws light that even exports and imports are assessed in terms of value thereof irrespective of duty liability thereof. Therefore, an exporter is required to declare value of export truthfully for the purpose of assessment under Section 2(2) of the Act for "let export" order under Section 50

56.

thereof. Such an interpretation of law follows from para 14 of the judgment of Supreme Court in the case of ***Om Prakash Bhatia Vs. CC, Delhi [2003 (155) ELT 423 (SC)]***. He further emphasized that the case of the appellant falls under para 16(d) of the judgment for a fair determination of FOB under section 14(1).

21.2 According to Id. DR, export consideration received may or may not be relevant to determine FOB value of export or import by Customs Authority. **Overvaluation of export is made** for the purpose of **money laundering** and such transaction **are illegal** under law. Modality of valuation of goods is stated in the judgment in para 3 at page 2 and following the law laid down in the case of ***Om Prakash Bhatia*** judgment (*supra*). Adjudicating authority has therefore rightly determined **FOB** which is basis for grant of DEPB. He further submitted that principle laid down in the Om Prakash Bhatia judgment was reiterated in the case of ***CCE & C, AP vs. Suresh Jhunjunwala[2006 (203) ELT 353 (SC)]*** (para 20).

22. Learned DR explained that Appellants were given 10 opportunities to explain their case even before issuance of Show Cause Notice (SCN). That is stated in different paragraphs thereof. But they failed to defend. Para 2 of SCN at **page 84 of volume-IV of paper book** shows that the exports (both past and live) made by appellants were overvalued to make undue claim of DEPB. The watches exported were **"Geneva", "Yasoda" "Rivera" and "Star"** brands. Statements were recorded from different persons in the course of investigation. **Sri Ishwar Das in his statement recorded on 31.8.04 as extracted in para 4 at page 842 of volume-IV of the**

28.

paper book stated that appellant had **never exported gold plated watches nor watches with gold components therein**. The cost sheet filed on **31.8.2004** by manufacturer Exporter Appellant in respect of watches referred at page 844 of Volume-IV of the paper book shows over-valuation thereof manipulating cost and profit element. **Gold plating, gold polishing, acid gold polishing** are different processes. **No gold** was at all used in the **acid polish** activity. **Neither gold nor nickel or chrome was used** by exporter appellants. Statement of Shri **Nanak Das** categorical brought out no use of gold in the watches meant for export. His explanation dated **1.9.04** also brought out that watches exported were overvalued. Para 7 of the SCN contains the statement of Sri **Ishwar Das** which is incriminating in nature. Page 328 of the Volume IV of paper book (SCN) proves how the manufacturer exporter-appellant, merchant exporter and importer at various places were related persons. Page 842 of the paper book shows that all merchant exporters were related to exporter appellant being connected firms and located in the premises of the appellant. They were all instrumentality of exporter appellants. Appellant suppressed the said relationship with a view to suppress the value of the goods determinable under section 14 of the Act showing profit margin of 2.5% of turnover.

23. Consideration in respect of exports made to UK were paid from Hong Kong. There was real suppression of export value. Placing reliance on **para 8 (xxx) of the SCN**, it was argued by Id. DR that false evidence were created to show that domestic sale price was followed to show that **FOB of watches exported was same as PMV** while cost sheet was manipulated to show high cost. False and

2.

fabricated documents were created by appellants to show as if there were domestic sales when there was no such actual sale made. **Shri Nanak Das on 8.9.2004** stated that there was use of gold. But that was false. Cost sheets of all **3 dates were fabricated** which is established from **para 12 (iii) of SCN at page 10** (Ref: **page 849 of volume-IV** of paper book) thereof.

24. Reliance on the statements appearing in **paras 11 and 15 of SCN** (Ref: page 842-851 of volume-IV of paper book) was made by Id. DR to submit that **(1)** neither in past exports nor in live consignments, gold was used; **(2)** cost sheets were fabricated and statements recorded were incriminating in nature; **(3)** cost of manufacture was very low without use of gold; and **(4)** contradictory statements were given by the parties to divert attention of Investigation. All such factors contribute to the questionable modus operandi of appellants.

25.1 Placing reliance on **cost sheet dated 31.8.04**, Id. DR further submitted that when department noticed that the said statement was fabricated and unreliable, appellant came on **10.09.2004** to submit another cost sheet showing lower cost of components. That was also **false** which was established from the statement recorded. The item covered by that cost sheet as appearing in cost sheet **dated 31.08.2004** at page 5 of Show Cause Notice **was Rs. 195/-**. But that was **reduced to Rs.45/-** in the cost sheet of **10.09.2004** as per para 14 of SCN at page 11 thereof (ref. page 854 of volume-V of paper book). Para 14(1) shows that **cost sheet dated 10.09.2004 was fabricated. Even though there**

was reduction in the cost, as appearing at page 11 of SCN, **the cost of watches of each type was shown to be abnormally high.**

25.2 When investigation found that there were contradictory statements and false cost sheets were filed, **search to the premises of the manufacturer was made on 14.09.2004.** Sampling of domestically sold watches was taken on 14.09.2004. Watches meant for export were lying in different (Ref. page 23 of SCN of volume-I of paper book) place. **Such watches were without use of gold components.**

25.3 When dubious practice of appellant was known to Revenue, appellant came out with **third** cost sheet on **24.9.04** substantially **reducing** the cost of the watches. Appellant's plea that gold was used in making **components** was not substantiated by any evidence. Department **again** proceeded to make search on **22.9.04** and panchnama was drawn (**Ref. page 199 of volume-I of paper book**). That panchnama shows that no goods were lying for export. Stock of watches meant for domestic sale was work in progress. Samples were drawn from such goods for market survey.

26.1 Relying on statements dated **05.10.2004 of Shri Nanak Das** in para 3 (1) at page 26 of SCN read with para 31 (iii) thereof, Id. DR submitted that claim of use of gold in the past export consignments and live consignments was totally **false**. Domestic sale was **negligible**. There was no proof to show that there was use of gold in the watches so sold. Test report shows no use of gold (ref. page 24 of SCN at page 865 to 866 of Volume-IV of the paper book). Samples taken on **14.09.2004** when sent to **Titan Industries**, that

g.

concern reported on **28.10.2004** that very **negligible quantity** of gold was used in watches meant for **domestic sale**. This is coming out from **para 35 of SCN**. Placing further reliance on **para 36 of SCN** (ref. page 871 of volume-IV of paper book), Id.DR says that part of samples drawn on **14.9.2004** were sent to the **Department of Meteorological, Malvia Institute of Technology, Jaipur**. That institute also reported on **1.11.04** that **minor** quantity of gold was used in the watches meant for **domestic sale**.

26.2 Ld. DR submitted that **sample of past consignment was lying with Revenue**. That is revealed from Para 32 at page 28 of SCN. Samples drawn as is apparent from **para 32 of SCN** shows **no use of gold** which was **confirmed by Shri Ishwar Das** in his statement. This statement was again corroborated from **para 32 of SCN** proving no use thereof and plea of use of gold **was to manipulate the cost of figures to show that to be high** in order to make higher DEPB claim. Even **page 862 of volume-4** of paper book proved that cost data furnished by appellant was arbitrary and without evidence. This is established from para 28 of SCN of volume-4. When investigation proceeded to analyze cost of components used in the watches as is exhibited **by pages 872-880 of the paper book No.4** and detailed analysis was done in **para 45 of Order-in-Original**, it revealed that all the cost sheets were engineered against Revenue.

26.3 Revenue analysed the cost of goods exported during the years **1999-2000 to 2000-2005** exhibited in Annexure "C" to SCN at **pages 892 to 895 volume-4 of paper book**. Cost of manufacture appearing in the said Annexure "C" when analyzed in detail with profit margin at **page 937 to 945 of volume-4** of paper book, that enabled

26.

investigation to determine **PMV** which demonstrated false **FOB** reflected in Shipping Bills.

27.1 Placing reliance on **para 29** of SCN appearing at **page 862 of volume-IV** of paper book, Id. DR stated that cost sheet presented **on 23.01.2003** was proved to be false. Chartered Accountant of the appellant issued **false certificate**. Falsification of documents was made by exporter-appellant. Such falsification was again confirmed by version of exporter-appellant in **para 22 volume VII of paper book**. Brand name was added by the exporter appellant to the certificate issued by Chartered Accountant after issuance thereof and such certificates were severely used on different occasions by the appellant since that were undated. Para 32 of SCN shows that **same certificate used on 23.01.2003 was used** to cause prejudice to Revenue **in respect of different consignments exported** since that certificate was **undated** by the Chartered Accountant.

27.2 Ld. DR says that para 29 of SCN of volume-VII contained incriminating evidence which was the statement of the **Chartered Accountant** given against the appellant and the appellant confirmed that statement in para 30 of Show Cause Notice (ref. **page 863-864 of Volume-IV** of paper book) is relevant to appreciate contention of Revenue. Statement of Chartered Accountant was **confronted to Shri Nanak Das** who corroborated the same. The figures were adopted by the Chartered accountant **without any documentary evidence**. This clearly shows that the certificate issued by him **was false** and that was used against Revenue. Para 22 of SCN at page 27 thereof

§.

categorically brings out **manipulation of Chartered Accountant certificate** by exporter-appellant to make ill gain.

28.1 Revenue further argued that noticing mis-declaration of FOB value, false claim of use of the gold in making watch components, over-statement of cost of manufacture and revision thereof from time to time, adverse market enquiry report came up against the appellant, matter was referred **to DRI** as is appeared from para 47 of SCN (ref: page 882 of Volume-4 of paper book). In terms of **para 50 of SCN**, the report received from Second Secretary (Trade), High Commission of India, **London**, by his letter dated 11.02.2005, showed wide variance between FOB declared by the appellant to the Indian customs and the value declared to England customs. **Very low value was** declared thereat while high value was declared to Indian customs. Similarly, mis-declaration in the same manner was made to **Spanish** authorities. The declaration to the customs authorities abroad were **10 times lower** than the value declared to the Indian customs. Low export value **declared to Spain customs had gone to Dubai** in respect of same goods which were exported by the appellant to Dubai. This comes out from the letter dated 13.09.2005 of the High Commission of India in **London**.

28.2 Para 50.2 of the SCN reveals that **DRI made further investigation with Dubai customs**. That authority by letter dated 19.09.2005 informed DRI that the value declared to Dubai customs was **10 times lower** than the value declared to Indian customs. All such facts appear in para 50.2 of SCN. Inviting attention to para 50.3, Id. DR submitted that by letter dated 20.07.2005, **the Consulate**

ff.

General of India in Hong Kong reported that very high value was declared to Hong Kong customs. **But on detection by customs, that was lowered by the importer** revising the value stated in the Bill of Entry thereat. Such lowering was done to get rid of mis-declaration. Hong Kong customs informed that the information revealed by letter dated 20.10.2005 was neither disclosable to third party nor usable in any proceedings. Inviting attention to para 50.4 of SCN, learned DR submitted that over-valuation was established fact. But investigation was handicapped due to embargo of UK law.

28.3 Revenue also relied on the decision of the Tribunal in the case of ***Mahalaxmi International Exports Vs. CC, Jaipur [2004 (169) ELT 68 (Tri. – Del)]*** to submit that the report of the foreign authority is reliable and Apex court in the case of ***Manohar Rajaram Chhabria and Orson Electronics Vs. Collector [1997 (93) ELT A133 SC]*** approved the decision of the Tribunal holding that result of foreign enquiry cannot be faulted. Para 51 of SCN clearly brought out that **the claim of use of gold in making watch was false. Such *modus operandi* was followed to make an artificial inflation to the FOB and dubious practice of the appellant was summarised in SCN to give right to the appellant to defend.**

29.1 **Page 891 of paper book of Volume-4** brought out the **relation of the exporter and importer** at different places in terms of page 52 of Show Cause Notice showing that the said relation was instrumental to the over-valuation of goods exported. Relying on para 17 of the decision in the case of ***Olympia Overseas Vs. CC, Cochin [2008 (223) ELT 114 (Tri. – Bang.)]***, Revenue submitted that

26.

when customs finds that there is collusion between the importer and exporter, mis-declaration is proved for which the appellants should be dealt deterrently under law. To the said extent, reliance was also placed on para 5 of the decision in the case of ***Pradip Polyfils Pvt. Ltd. Vs. Union of India [2004 (173) ELT 3 (Bom.)]***.

29.2 Entire findings in adjudication was supported by Revenue on all counts reiterating that **Hong Kong and UK** importers were related parties and payment modality was followed according to sweet will of parties over-valuing the exports. **Para 26(iii) in page 18 of Show Cause Notice** (ref: page 857, Volume-4 of paper book) brought out relation of the parties. Cost sheet filed by merchant exporter was **replica** of cost sheet filed by the manufacturer exporter appellant. Relation of parties was brought to the knowledge of the appellants in para 26 (xii) of SCN (ref: pages 858-859 of paper book Volume-4 of the paper book) for defence.

30. Ld. DR further submitted that when the goods were found to be mis-declared, following the decision in the case of ***Om Orajasg Vgatua Vs. CC, Delhi [2003 (155) E.L.T.423 (S.C.)]***, Section 113 (i) of the Customs Act, 1962 was applied. Shipping bill has to truthfully declare proper FOB or Prevailing Market Value (PMV) as the case may be under Export (Form) Regulations, 1991 as has been observed in para 15 of the judgment in the case of ***Om Prakash Bhatia Vs. CC, Delhi*** (supra).

31. It was also submitted by Revenue that a mere non-mentioning of the provision in Show Cause Notice does not vitiate the proceedings following the ratio laid down by the Hon'ble apex court in the case of



Collector of Central Excise, Calcutta Vs. Pradyumna Steel Ltd. [1996 (82) ELT 441 (SC)]. Revenue further relied on the decision of Hon'ble High Court of Andhra Pradesh in para 47 in the case of **Sravani Impex P. Ltd. Vs. ADG, DRI, Chennai [2010 (252) ELT 19 (AP)]** to submit that violation of foreign exchange law is to be dealt severely.

REJOINDER OF APPELLANT

32. In rejoinder, Id. advocate for appellant submitted that cost construction is **no prescribed mode of valuation under law**. Therefore, Revenue's attempt to value the cost of the goods exported following cost construction method is not warranted. Reliance was placed on the decision in the case of **C.C., Mumbai Vs. Vishal Exports Overseas Ltd. [2007 (209) ELT 331 SC]**, to submit that cost construction method is not applicable.

33. Relying on the decision of the apex court in the case of *Om Prakash Bhatia Vs. CC, Delhi (supra)*, appellant submitted that **PMV in India has no relevance** to determine FOB, since FOB is export value to be declared and the value so declared is to be realised. Therefore, that cannot be challenged by Revenue under any mis-construction that **FOB and PMV** are same.

34. Some models of watches like "**geneva**" and "**star**" were also cleared for home consumption during the period of export **01.01.2000 to 05.08.2004**. This is verifiable from **pages 620, 623, 627, 628 and 629 Volume-3** of paper book. Further, when **purchase of gold was not disputed** by Revenue, in absence of any enquiry made to gold sellers, no adverse inference can be drawn

96.

against appellant. **Volume-10 of paper book** shows proof of purchase of gold. Department does not dispute. Domestically sold goods contained gold components in watches. Therefore, there cannot be suspicion against appellant.

35. It was further submitted on behalf of appellants that circular prescribing the time period of **30 days, 90 days** and reasonable period, issued by CBE&C is from time to time, is binding on Revenue authorities, relying on page 18 of the decision of Hon'ble High Court of Madras in the case of **J.G. Exports Vs. CC, Chennai [1999 (105) ELT 258 (Mad.)]** and **JG Exports Vs. CC, Madras**. The decision reported in **2000 (121) ELT 754 (Tri. LB)** was upheld by Hon'ble Supreme Court as reported in **2003 (154) ELT 353 (SC)**. Circular in respect of time period to enquire PMV being binding on the Customs authority, that authority should not have travelled beyond the circular which has been appreciated in **CCE, Jaipur Vs. Super Synotex [2014 (301) ELT 273 (SC)]**. Form 59 issued under Export (Form) Regulations, 1991 deals with **FOB** and **PMV** to be declared wherever that is applicable. **PMV was** not required to be declared in the shipping bill. Therefore, there was **no mis-declaration**. Appellant also submitted that assessment of shipping bills is conclusion of the entire declaration and that became **final**. Therefore, there cannot be **re-opening** of the matters relating to shipping bills so concluded.

36. Appellants also submitted that **export period covered four years and seven months**. During such a long period nothing against the appellant was found and assessments having been concluded, there cannot be any doubt of mis-declaration.

Handwritten signature

37. On the issue of **overseas enquiries**, it was submitted that **54 import declarations** given by importers of Dubai **does not** bind the appellants to **disturb its FOB** declared to the Indian customs. Those documents **not being authenticated nor backed by evidence** cannot be used against the appellant. Mistake reported by Hong Kong customs having been rectified, there is no basis to discard the FOB declared by appellant to Hong Kong customs (ref: **page 764 of Volume-3 of paper book**). **Page 768 of Volume-3** of paper book supports appellants' declaration in other transactions made to Hong Kong customs. So also, **page 782** of the said paper book supports this proposition.

38. According to the appellants, when Revenue failed to discard appellants arguments on the time bar issue and three years period being time-limit to deal DEPB cases as has been held by Tribunal in the case of ***Colourtex Vs. CC, Kandla [2012 (280) ELT 225 (Tri. – Ahmd.)]***, Revenue had no authority to adjudicate a matter which is time-barred. Similarly, when Revenue did not rebut the arguments of the appellant on confiscation issue, such confiscation became unwarranted.

39. Lastly, it was submitted that points on which a decision is made that becomes precedent and no other points. Therefore, Revenue not arguing on the issues dealt by the judgments cited by the appellants, rendered the adjudication fatal as has been held in the case of ***State of Orissa Vs. Sudhansu Sekhar Misra & Others [1968 AIR 647]***. Similarly, irrelevant decisions cited by Revenue not relating to the point argued by the appellant, do not bind the

96

appellant following decisions of Hon'ble apex court in the case of **CCE, Bangalore Vs. Srikumar Agencies [2008 (232) ELT 77 (SC)]** and **Ispat Industries Ltd. Vs. CC, Mumbai [2006 (202) ELT 561 (SC)]**.

FINDING AND CONCLUSION OF TRIBUNAL

40. Heard both sides and perused the records.

41.1 The principal issues involved in this batch of appeals is whether customs has jurisdiction to question FOB value declared in respect of export of past and live consignments and such declarations whether were correct or liable to be reduced by Customs. The third issue involved is whether cost construction method followed by Revenue to determine FOB value of the exports is proper or the method of valuation prescribed by Valuation Rules of 1988 as held by Apex Court in the case of **Siddachalam Exports Pvt. Ltd. V. Commissioner of C. Ex., Delhi-2011 (267) ELT 3 (SC)** shall be applicable to such exports.

41.2 Apart from above, other ancillary issues raised by the appellant were as to whether the market enquiry report gathered by Revenue were admissible in evidence and whether overseas enquiry report lent support to disturb the FOB declared by appellants and whether FOB and PMV means one and the same. Further issue is whether the adjudication is time barred.

41.3 So far as the jurisdiction issue of Customs Authorities is concerned, law mandates that such Authorities have jurisdiction to assess value of goods meant for export in terms of section 2(2), 14, 50 and 51 of the Act to pass "let export" order. As soon as the goods meant for export reaches customs station, jurisdiction of Proper Officer

begins. Assessment in terms of above sections is prerequisite to issue "let export" order under section 51 of the Act. In order to complete the exercise of issuing "let export" order, the document that is examined by the proper officer is the Shipping Bill under Section 50 of the Act. Section 50 operates as soon as the goods enter into the stream of export. Section 50 reads as under:

"Entry of goods for exportation. – (1) *The exporter of any goods shall make entry thereof by presenting electronically to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.*

Provided *that the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner.*

(2) *The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.*

[Emphasis supplied]

42.1 Determination of value of export is mandate of section 50 of the Act following the meaning of the term "assessment" defined by section 2(2) thereof. The term value is defined by section 2(41) of the Act to serve the purpose of section 14 of the Act. Therefore, it is considered necessary to reproduce Section 2(2), 2(41) and 14 of the Act as under for convenience of reading:

Section 2(2)

"assessment" includes provisional assessment, self-assessment, re-assessment and any order of assessment in which the duty assessed is nil;

Section 2(41)

"value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14

96

Section 14

Valuation of goods. — (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation. — For the purposes of this section —

(a) "rate of exchange" means the rate of exchange —

- (i) determined by the Board, or

(ii) *ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;*

(b) *"foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).*

[Emphasis supplied]

42.2 Examining jurisdiction of the customs authority to determine value of exports whether liable to duty or not, Hon'ble Supreme Court in ***Om Prakash Bhatia - 2003 (155) ELT 423 (SC)*** held that whether the goods are liable to duty or not those are subject to assessment by customs authority. Even though the exporter is not concerned with the prevailing market value (PMV) in India of the goods sought to be exported but he is required to disclose true export value of goods which should be truthfully done under Section 14 of the Act. This is clear from the reading of para 12, 13 and 14 of the judgment. The said paragraphs are reproduced below for convenience of reading:

"12. These two clauses of Section 18 leave no doubt that exporter is not concerned with the prevailing market price in India of the goods sought to be exported, but he is required to disclose true export value of goods. That is to say, exporter has to disclose full and true sale consideration - export value of the goods. The notification issued in exercise of the power under Section 18 also inter alia provides that Central Government prohibits the export of all goods unless exporter furnishes to the prescribed authority a declaration in the prescribed form of material particulars including the full export value of the goods or in the alternative the value of the goods which he expects to receive on their sale in overseas market. Hence, importance is given to the value of goods which exporter is to receive. It also provides that the exporter shall affirm in the declaration that full export value of the goods has been or will within prescribed period be paid in the prescribed

28.

manner. Further, the learned Additional Solicitor General referred to the notification issued under the said Section, relevant part of which reads thus:-

"GSR. 78 - In exercise of the powers conferred by sub-section (1) of Section 18 of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Economic Affairs) No. GSR 2641, dated the 14th November, 1969, the Central Government hereby prohibits the export otherwise than by post, of all goods, either directly or indirectly, to any place outside India. Other than Nepal and Bhutan, unless the exporter furnishes to the prescribed authority a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars which, among others, shall include the amount representing :-

(i) the full export value of the goods, or

(ii) if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions express to receive on the sale of the goods in the overseas market,

and affirms in the said declaration that the full export value of the goods (whether ascertainable at the time of export or not) has been, or will within the prescribed period be, paid in the prescribed manner".

13. Apart from the aforesaid provision, for finding out the true export value of the goods, Section 14 of the Act provides relevant procedure. Section 14 is to be read along with Section 2(41), which defines the word 'value'. Section 2 (41) reads as under:-

'S.2(41) - "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) of section 14."

Thereafter, relevant part of Section 14 reads thus :-

96.

*Valuation of goods for purposes of "14.assessment. - (1)
For the purposes of the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be -*

the price at which such or like goods are ordinarily sold, or offered for sale; for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale :

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of export, as the case may be, is presented under Section 50;

(1A) Subject to the provisions of sub-section (1) the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A) if the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

...." (3)

14. The aforesaid Section would be applicable for determining the value of goods for the purposes of assessment of tariff under the Act or any other law for the time being in force where under a duty of customs is chargeable on any goods by reference to their value. In the present case, on export of goods in question, no

28.

duty was payable under the Act. It was, therefore, contended that there is no scope of application of Section 14 for determining the value of goods by applying the criteria laid down in the said Section. In our view, this submission cannot be accepted. For determining the export value of the goods, we have to refer to the meaning of the word 'value' given in Section 2(41) of the Act, which specifically provides that value in relation to any goods means the value thereof determined in accordance with the provisions of sub-section (1) of Section 14. Therefore, if the export value of the goods is to be determined, then even if no duty is leviable, the method (mode) for determining the value of the goods provided under Section 14 is required to be followed. Section 14 specifically provides that in case of assessing the value for the purpose of export, value is to be determined at the price at which such or like goods are ordinarily sold or offered for sale at the place of exportation in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for sale. No doubt, Section 14 would be applicable for determining the value of the goods for the purpose of tariff or duty of customs chargeable on the goods. In addition, by reference it is to be resorted to and applied for determining the export value of the goods as provided under sub-section (41) of Section 2. This is independent of any question of assessability of the goods sought to be exported to duty. Hence, for finding out whether the export value is truly stated in the shipping bill, even if no duty is leviable, it can be referred to for determining the true export value of the goods sought to be exported."

[Emphasis supplied]

42.3 Hon'ble Court in the above judgment also held that where export value is not correctly stated but there is intentional over invoicing for some other purpose that is to say not mentioning true sales consideration of the goods then it would amount to violation of the conditions of export. The purpose may be money laundering or some other purpose, but it would certainly amount to

illegal/unauthorized money transaction. In any case, over invoicing of the export goods would result in illegal or irregular transaction in foreign currency. This is patently clear from para 18 of the judgment which is reproduced below for convenience of reading:

"18. Hence, in cases where the export value is not correctly stated but there is international over-invoicing for some other purpose, that is to say not mentioning true sale consideration of the goods, then it would amount to violation of the conditions for import/export of the goods. The purpose may be money laundering or some other purpose, but it would certainly amount to illegal/unauthorized money transaction. In any case, over-invoicing of the export goods would result in illegal/irregular transactions in foreign currency."

[Emphasis supplied]

43.1 On the above settled position of law, the material facts and evidence of the cases on record were examined. It transpires that FOB of the watches covered by past and live consignments were overvalued on the grounds hereinafter dealt elaborately. Only one-tenth of such values were declared to Dubai and Hong Kong Customs which remained unrebutted. Overseas enquiry result was challenged by the appellants only on the ground that the accompanying documents to the report were not authenticated and also the enquiring authority became adjudicating authority later. But truth of declaration of low value to the Customs of those countries could not be repelled leading any cogent evidence to the contrary by appellants. Revenue discharged its burden of proof making allegation of misdeclaration relying on evidence gathered from abroad and also basing on various other contributory factors as well as on the basis of remittance came from Hong Kong to Dubai and reduction of declared value before Hong

8.

Kong Customs upon detection by them. Added to that, claim of use of gold in making watch components received low weightage by test results of the Government recognized laboratory.

43.2 Contention of Revenue as to misdeclaration of FOB was established when the appellant M/S Roche Watches changed its stand on cost of manufacture of watches filing three cost statement on three different dates i.e., on **31.8.2004, 10.9.2004 and 24.9.2004**. Repeated revision of such statements gives rise to the inference that the records of the appellants were not reliable and certificate issued by the Chartered Accountant was false. Further, that certificate being undated, were repeatedly used by the manufacturer appellant on several occasions. It became further clear from the significant variation in the cost elements without satisfactory explanation thereon. All such factors proved that records of M/s Roche Watches were unreliable.

44. Further, material borne by record discarded plea of use of gold in making watch components made by M/s Roche Watches. Appellant was unsuccessful on such plea in view of very minor quantity of use of gold found in the samples drawn on 14.9.2004 sent to Department of Metallurgical, Malvia Institute, Jaipur for testing. This has established that the claim of the appellant that major quantity of gold used in making watch components was false. The brand of watches which were subject matter of test by the department of Metallurgical, Malvia Institute, Jaipur containing minor amount of gold, can only be said to have contained minor quantity of gold used in the watch components manufactured by the manufacturer appellant.

86.

45. Misdeclaration of the value of export to Indian Customs was patent from remittance of lower consideration in respect of the goods exported by the appellant M/s Roche Watches to Dubai and such goods exported therefrom to Hong Kong which remained unrebutted leading cogent evidence to the contrary by appellant. Therefore, even such factor contributes to the inference that higher export value came to India while the past export goods did not command such higher value corroborated by appellant's own conduct of declaration of lower value upon detection by Hong Kong customs.

46. In all fairness, in view of the above discussions, the PMV being different from the FOB and exporter is not concerned with PMV of the goods in India sought to be exported but being required to disclose true value of goods fully and truly as has been held by Apex Court in the case of **Om Prakash Bhatia V. Commissioner of Customs, Delhi – 2003 (155) ELT 423 (SC)** the appellant exporter deserves consideration for valuation of the export in terms of the Valuation Rules, 1988 as has been held by Apex Court in the case of Siddachalam Exports (supra). The Hon'ble Court in para 16 of the said judgment held that the procedure prescribed under Section 14(1) and particularized in Rule 4 of 1988 Valuation Rules has to be adopted to determine the value of goods entered for exports irrespective of the fact whether any duty is leviable or not. It has also been held therein that the price received by the exporter in the ordinary course of business, shall be taken to be transaction value for determination of value of goods under export, in business of any special circumstances indicated under Section 14(1) of the Act read with Rule 4(2) of 1988

9b.

Valuation Rules. The said para 16 of the judgment is reproduced below for reference:

"16. It is settled that the procedure prescribed under Section 14(1) of the Act and particularized in Rule 4 of the 1988 Rules has to be adopted to determine the value of goods entered for exports, irrespective of the fact whether any duty is leviable or not. It is also trite that ordinarily, the price received by the exporter in the ordinary course of business shall be taken to be the transaction value for determination of value of goods under export, in absence of any special circumstances indicated under Section 14(1) of the Act and Rule 4(2) of the 1988 Rules. The initial burden to establish that the value mentioned by the exporter in the bill of export or the shipping bill, as the case may be, is incorrect lies on the Revenue. Therefore, once the transaction value under Rule 4 is rejected, the value must be determined by sequentially proceeding through Rules 5 to 8 of the 1988 Rules. (See: Commissioner of Customs (Gen), Mumbai v. Abdulla Koyloth - JT 2010 (12) SC 267 = 2010 (259) E.L.T. 481 (S.C.).)"

[Emphasis supplied]

47. No doubt, the initial burden to establish that the value mentioned by exporter in the shipping bill is incorrect lies on the Revenue. Revenue has discharged its burden in the manner indicated in the preceding paragraphs. Therefore, once transaction value under Rule 4 is rejected, the value must be determined by the sequential proceeding through Rules 5 to 8 of the 1988 Valuation Rules. In this regard reference may be made to **Commissioner of Customs (General) Vs. Abdullah Koyletth – 2010 (259) ELT 481 (SC)**. Following the ratio laid down in Abdullah Koyletth's case, the principle of law has been stated in para 16 of the judgment in Siddachalam Exports, Apex Court (supra). While explaining the law relating to valuation, the Apex Court in the case of **Commissioner of Customs**

sf

Vs. Abdullah Koyleth in para 15 of the judgment explained the modality of valuation as under:

"15. Both Sections 14(1) of the Act (as it existed at the relevant time) and Rule 4 of the 1988 Rules provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the transaction value in the absence of any of the special circumstances indicated in Section 14(1) of the Act and particularized in Rule 4(2) of the 1988 Rules. Therefore, the Customs authorities are bound by the declaration of the importer unless on the basis of some contemporaneous evidence the Revenue is able to demonstrate that the invoice does not reflect the correct value. (See : Commissioner of Customs, Mumbai v. J.D. Orgochem Limited [(2008) 16 S.C.C. 576 = 2008 (226) E.L.T. 9 (S.C.)] and Commissioner of Customs, Calcutta v. South India Television (P) Ltd. [(2007) 6 S.C.C. 373 = 2007 (214) E.L.T. 3 (S.C.)]. It is only when the transaction value under Rule 4 is rejected, that by virtue of Rule 3(ii), the value shall be determined by proceeding sequentially through Rule 5 to 8 of the 1988 Rules. (See : Commissioner of Customs, Mumbai v. Bureau Veritas & Ors. [(2005) 3 S.C.C. 265 = 2005 (181) E.L.T. 3 (S.C.)] and Eicher Tractors Ltd. (supra)). Rule 5 allows for the transaction value to be computed on the basis of identical goods imported into at the same time whereas Rule 6 provides for the computation of transaction value on the basis of the value of similar goods imported into India at the same time as the subject goods. In the absence of contemporaneous imports into India, the value is to be determined under Rule 7 on the basis of a process of deduction contemplated therein. If this is not possible, then recourse must be had to Rule 7-A, and if none of these methods can be employed to compute the transaction value, Rule 8 provides that the transaction value can be determined by using reasonable means consistent with the principles and general provisions of these Rules and sub-section (1) of Section 14 of the Act and on the basis of data available in India."

[Emphasis supplied]

st.

48. It may be stated that during the material period there was no specific export valuation rules for which the 1988 valuation Rules were held to have application to valuation of exports during the said period. Apex Court held that if for any reason data of contemporaneous exports of identical goods is not available, the procedure laid down in Rules 5 to 8 of the 1988 Valuation Rules is required to be followed and market enquiry could be conducted only as a last resort. This is patent from para 19 of the judgment in Siddachalam export Pvt. Ltd (supra). The said para is reproduced for convenience of reading and appreciation of the law relating to valuation of export during the material period:

"19. In the present case, as stated above, neither the adjudicating authority i.e., the Commissioner of Central Excise nor the CESTAT has dealt with the matter as per the procedure prescribed under the Act. At the threshold, instead of first determining the value of the goods on the basis of contemporaneous exports of identical goods, the Revenue erroneously resorted to a market enquiry. If for any reason, data of contemporaneous exports of identical goods was not available, the procedure laid down in Rules 5 to 8 of the 1988 Rules was required to be followed and market enquiry could be conducted only as a last resort. It is evident that no such exercise was undertaken by the Commissioner and interestingly he, acting as an appellate authority, proceeded to test the evidentiary value of the report submitted by M/s. Skipper International and rejected it on the ground that it does not depict if the identical garments had ever been purchased by the said concern. Observing that in the absence of any other independent evidence relating to market enquiry, there was no other corroborating evidence to support the allegation of inflation in FOB value, he dropped the proceedings initiated vide show cause notice dated 11th September 2003. Similarly, it is manifest from the CESTAT's order that revenue's appeal has

26.

been accepted mainly on the ground that report of M/s. Skipper International was worthy of credence and the exporter had failed to produce any evidence to establish that export value stated in the shipping bills was the true export value. In our opinion, both the said authorities have failed to apply the correct principles of law and therefore, their orders cannot be sustained."

[Emphasis supplied]

49. The Manufacturer exporter appellant themselves made various contradictory statements relating to use of gold and also cost statements were revised by M/s Roche Watches. Similarly, the Chartered Accountant deposed against the manufacturer appellant as has been argued by Revenue which remained uncontroverted by the manufacturer appellant leading cogent evidence to the contrary. Thus valuation done by the exporters became questionable warranting revaluation under Section 14 read with the provisions contained 1988 Valuation Rules as has been held by Apex Court in the aforesaid citations. Therefore, learned adjudicating authority granting fair opportunity to the appellant shall re-determine the value of the export both in respect of past and live consignment cases except the 29 provisional assessment cases. That shall serve interest of justice.

50. Of course, 29 Shipping Bills of the appellant manufacturer M/s Roche Watches in the past were subject to provisional assessment and department did not find discrepancy in the declared FOB therein except one bill which was subjected to market enquiry and the figure prescribed by cap value was adopted. But this does not mean Customs is precluded to reassess the other shipping bill when aforesaid facts contribute for right determination of FOB in the light of ratio laid down in Siddachalam Exports case (supra).

8.

51. The appellant made argument that determination of the value by the customs authority has no relevance for grant of DEPB. This does not make sense for the reason that the customs authority is required to determine the proper value of export to carry out the object of the provisions of Customs Act, 1962. At the cost of repetition, it may be reiterated, that determination of the value of export being essence of the law for the reason that over valuation may be for money laundering or some other purpose amounting to illegal/unauthorized money transaction, such an object of law cannot be given go by. The value of export determined by Customs whether adoptable by DGFT to entertain DEPB is left to the entire exclusive jurisdiction of that Authority. Therefore, the appellant fails in its contention that determination of FOB is of no significance in law in view of exercise of jurisdiction over DEPB by DGFT.

52. The appellant manufacturer contended that every Shipping Bill of the past exports having been accompanied by cost statement to show cost of manufacture of watches shipped by such bill to satisfy the Customs authority that FOB was truthfully declared. That cannot be doubted. It was also contended that gold components being used in the watches exported; those were costly warranting declaration of higher FOB. But such contentions failed to be merited when sample of watches out of seizure made on 14.09.2004 were sent to Department of Meteorological Institute of Technology, Jaipur for testing. Such test resulted in the finding of use of very minor amount of gold in the watch components tested. Further, that appellant crippled itself to argue so, when it went on revising its cost statement twice proving its records to be unreliable. Accordingly it can be inferred that only those

96.

brand of watches which were subject matter of test by the aforesaid institute, if were exported, can be said to have contained minor use of gold in the components to the extent found by the Institute.

53. Variations in the Cost Statements, unreliability of the books of accounts and specific statement of directors of the manufacturer appellant as to no use of gold in making watch components, preponderance of probability demonstrated misdeclaration of the value of export in the past and through live consignments. Therefore, all exports (both past and live consignments) to extent aforesaid are liable to valuation in terms of law laid down by the judgment of the apex court in *Siddachalam Exports Pvt. Ltd (supra)*.

54. Manufacturer exporter Appellant's contention that the market enquiry done by the Revenue was unwarranted in view of value cap prescribed and cross-examination of the examiner as well as the Officers not allowed need not be addressed at this stage since valuation of past and live consignments are to be valued in the manner as has been held by the apex court in the case of *Siddachalam Exports Pvt. Ltd. Vs Commissioner of Central Excise, Delhi-III* reported in 2011 (267) E.L.T.(S.C.) and market enquiry is the last resort. If the data of contemporaneous exports of identical goods is not available, the procedure laid down in Rules 5 to 8 of the Valuation Rules 1988 is required to be followed and market enquiry could be conducted only as a last resort. The Adjudicating authority has to first make an exercise according to the law laid down in the case of *Siddachalam Exports Pvt. Ltd. (supra)* since manner of market enquiry done from concerns/persons other than the enquiry done from **TITAN** as contended by the appellants provided unreliable basis is appreciable.

ff.

Therefore, to resolve the controversy and to arrive at an appropriate value of export, the ratio laid down in *Siddachalam Exports Pvt. Ltd.* is necessarily to be followed by learned Adjudicating authority.

55. There is no difference to the proposition that onus of proof of misdeclaration of the FOB lies on Revenue. But Revenue has discharged its burden bringing out the material fact that there was declaration of very low value of import before Dubai Customs and Hong Kong, Customs which were nearly one-tenth of the value declared to Indian Customs remaining unrebutted by the manufacturer exporter. Although the documents accompanying the overseas enquiry report were not visible to be authentic, the materials on record proving declaration of low import value to Dubai and Hong Kong Customs when failed to be ruled out, did not rule out questionable modus operandi of all the exporter appellants.

56. There was allegation of relation of importers with the directors of manufacturer exporter. No doubt manner of relationship was not brought out in the SCN. But their modus operandi proved accommodation by one party to the other to make declaration of low value of imports to Dubai and Hong Kong Customs. However the allegation of interconnected undertaking does not subsist in absence of such clear allegation in SCN.

57. The merchant exporters were instrumental to cause export of undervalued goods being buyers thereof and related to the directors of Roche Watches Pvt. Ltd. Exports made by them also requires revaluation as per direction made by this order in case of manufacturer exporter.

26.

58. Appellant argued that the adjudication is time-barred on the ground that there is no time-limit prescribed in law to determine FOB for grant of DEPB and it is judicially settled that reasonable period of three years may be considered as limitation for the completion of adjudication. But the facts of the case suggest that there is overvaluation of FOB during the period 1.1.2000 to 5.8.2004 and even thereafter by live consignments. Show Cause Notice was issued on **30.11.2008** and learned Adjudicating authority completed adjudication on 30th September, 2009. There is nothing found wrong on the action of the learned Adjudicating authority as to lapse of time. A case of overvaluation should not be sanctioned on the plea of time bar. Therefore, such a plea is rejected. It was also the contention of the appellant that there cannot be market enquiry beyond certain period prescribed by the Board's circular. Present case is a case where value of the export is to be determined in accordance with Valuation Rules, 1988 and that has been directed by this order to be carried.

59. Appellant argued that the adjudication is time-barred on the ground that there is no time-limit prescribed in law to determine FOB for grant of DEPB and its judicially settled that reasonable period of three years may be considered as limitation for the completion of adjudication. But the facts of the case suggest that there is over-valuation of FOB during the period 01.01.2000 to 05.08.2004 and even thereafter by live consignments. Show-cause notice was issued on 31/01/2008 and learned Adjudicating authority completed adjudication on 30th September, 2009. There is nothing found wrong on the action of the learned Adjudicating authority as to lapse of time nor a case of over-valuation should be sanctioned on the plea of time

96.

bar. Therefore, such a plea is rejected. It was also the contention of the appellant that there cannot be market enquiry beyond certain period prescribed by the Board's Circular. Present case is a case where value of the export is to be determined in accordance with Valuation Rules 1988 and that has been directed by this order to be carried out.

60. In view of the discussions made above on the principal issues, it is considered that dealing with various ancillary issues would be only academic exercise.

61. Since this order has proposed remand of the matter for revaluation of the exports, for the reasons stated aforesaid, it would be premature to decide on the penalty aspects. In the course of readjudication, if learned Adjudicating authority finds that any of the persons or concerns is liable to penalty, he may pass appropriate order granting fair opportunity of hearing on such aspect also.

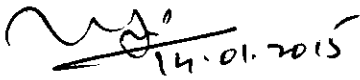
62. So far as confiscation aspect is concerned, law is well settled that when the goods exported were not covered by bond or guarantee and have left India, such goods are not confiscable. But goods available for export are confiscable if any of the elements of section 113 of the Act are present. The goods in the present appeals are subject to the provisions of section 18 of the Foreign Exchange Regulation Act, 1973 as well as Export (Control) Act, 1947 and law relating to export. Therefore applicability of Section 113 is to be carefully examined by the learned Adjudicating authority. However the decision relating to confiscation may be subject to provisions of Section 125 of the Customs Act, 1962.

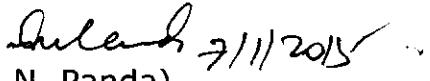


63. It was also the contention of the appellant that the goods exported and meant for export are neither restricted nor prohibited. Learned authority shall by a reasoned and speaking order deal such aspects and record his finding thereon as he may consider proper in the course of readjudication.

64. In the result, all the appeals are remitted to the original authority with the aforesaid direction for readjudication of the matter on the aspects aforesaid granting fair opportunity of hearing to the appellant and pass a reasoned and speaking order. In view of disposal of appeals, all the miscellaneous applications filed by respective appellants stand disposed.

(Pronounced in open court on 14.01.2015)


(MANMOHAN SINGH)
Technical Member


(D.N. Panda)
Judicial Member

Senthil/ksr/Rex