CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 3454, 3620-3621 of 2006 with
Excise Misc. Application Nos. 50053/2016 & 51738/2015

(Arising out of Order-in-Original No. 17&18/HKM/2006 8214 dated 19.07.2006 passed by the Commissioner of Customs (Exports), New Delhi)

DATE OF HEARING : 27.03.2017
DATE OF DECISION : 27.03.2017

M/s Global Diamond Pvt. Ltd. …. **Appellants**
Shri Anand Srivastav (Rep by Sh. J.M. Sharma, Adv.)
Shri Subash Sharma

VERSUS

CC, New Delhi …. **Respondent**
(Rep. by Sh. R.K. Manjhi, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 52629-52631/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

All these appeals are filed against the Order-in-Original No. 17&18/HKM/2006-8214 dated 19.07.2006 passed by the Commissioner of Customs (Exports), New Delhi. The period in dispute is September 2000 to October 2002.

2. The brief facts of the case are that, on 05.10.2002 at about 5.30 PM, on specific information, a Maruti 800 car bearing Registration No. DL-DC-A3725 was intercepted by NEPZ Customs while exiting from the outer gate of NEPZ, Noida. The said vehicle was carrying four persons of the assessee-Appellants. On scrutiny of the vehicle, 7 packets containing stranded jewellery, diamonds, precious/semi-precious stones, gold in primary form, loose papers and two note books (written) were seized.

It is the case of the Department that the assessee-Appellants has misused the NEPZ facilities and evaded the excise duty. So, by the impugned order, the Department demanded the duty and also levied the penalty under Rule 25 of the Central Excise Rules, 2002. Being aggrieved, the assessee-Appellants have filed the present appeals.

3. With this background, we have heard J.M. Sharma, learned counsel for the assessee-Appellants and Shri R.K. Manjhi, learned DR for the Department.

4. During the course of arguments, the learned counsel for the assessee-Appellants submits that vide letter dated 17.02.1988 they have established a unit in Noida Export Processing Zone (NEPZ) for manufacture and export of plain and studded jewellery. Later on, the zone was converted into Noida Special Economic Zone (NSEZ). During the period of 1999-2000, the unit of the assessee-Appellants had imported/exported the goods. On 05.10.2002, the

Officers of the Department has searched the Maruti car and recovered certain jewellery valued at Rs. 4.71 crores with certain documents. During the course of investigation, the Customs Officers carried out physical verification of the stocks of inputs including diamonds and precious stones and the same was found in order. There was no deficiency in the stock. But by the show cause notice dated 03.04.2003 and 24.11.2004, the goods were proposed for confiscation and demanded the duty on the jewellery allegedly manufactured and cleared by utilizing the domestic area of the zone 3080 carats diamonds.

It is the submission of the learned counsel for the assessee-Appellants that while computing the duty, the benefit of Additional Duty of Customs - Countervailing Duty (CVD) and Special Additional Duty of Customs (SAD) was not given. To this effect, the assessee-Appellants have filed the Misc. Applications. He also submits that the Work in Progress (WIP) Register was examined by the authorities but no deficiency was found. He further submits that the Department has taken the 3080 carats wrongly, in fact, it was 965.585 carats. The learned counsel also submits that penalty has also been imposed wrongly in contravention of Rule 25 of the Central Excise Rules, 2002 as in the show cause notice there was no proposal for confiscation of the goods.

However, the learned counsel, during the course of arguments, accepted the liability pertaining to the confiscation of the Maruti car along with jewellery valued at Rs. 4.68 lacs seized from the said Maruti car. He also accepted the redemption fine of Rs. 1.50 lacs as well as fine of Rs. 12,500/-. For the rest of penalty and duty demand, he contested the case vehemently.

On the other hand, Shri R.K. Manjhi, learned DR for the Department, supported the impugned order and submits that one of the Misc. Applications filed by the assessee-Appellants is pertaining to the jurisdiction of Commissioner of Customs (Export), New Delhi. He submits that the allegation of the assessee-Appellants is not correct that the adjudicating authority has no jurisdiction for seizing of the goods and passing the impugned order. To this effect, he has drawn our attention to the Board Circular No. 72/2000-Cus dated 31.08.2000 wherein it was mentioned that :

> *"2. The matter has been considered by the Board. It is noted that with the passage of time, a large number of Export Oriented Units has come up in the interiors of the country far away from the port towns and are in close proximity to the Central Excise Divisions and Ranges. Keeping in view the proximity of Central Excise Divisions and Ranges to the Export Oriented Units and also with a view to facilitate the work of the said EOUs, it has been decided that except for the EOUs located within the municipal limits of port cities/towns, the work of all EOUs shall be handled by the staff of jurisdictional Commissioner of Central Excise. In the case of port cities/towns etc. the work of EOUs located within the municipal limits of port cities/towns, shall be handled by jurisdictional Commissioner of Customs, Seaport. As regards the administrative control over the EPZs, the present arrangement would continue i.e. the work would continue to be handled by the Commissioners of Customs. Also, in case of new EPZs and the Special Economic Zones (SEZs) that are*

likely to come up in future, the administrative control shall be exercised by the jurisdictional Commissioner of Customs.

3. These instructions are issued in supercession of earlier instructions on the above subject."

5. In view of the above, we find no merit in the Misc. Applications and the same are dismissed.

ON MERIT:

6. After hearing the lengthy arguments, it may be mentioned that from the Maruti car jewellery, diamonds, precious/semi-precious stones, gold in primary form, loose papers and two note books (written) were seized. The assessee-Appellants have claimed the benefit of the Noida Special Economic Zone (NSEZ) and the goods were seized in the domestic area.

7. From the record, it appears that the demand is based on the documents recovered from Shri Subhash Sharma i.e. two exercise books, challans of MAP, Mumbai and WIP Register maintained in the Unit. On the detailed examination of these records and interrogation, it was clearly emerged that the assessee-Appellants' Mumbai Branch used to despatch diamonds from Mumbai on the challans addressed to their Branch located at New Friends Colony. These diamonds were actually received at assessee-Appellants' manufacturing unit at NEPZ (now NSEZ), Noida without making any entry at NSEZ Gate. After manufacturing of the diamond jewellery at the zone, the same were clandestinely

removed in domestic area from the zone without payment of applicable duty. Hence, we uphold the duty demand.

8. However, from the record, it appears that while computing duty, the adjudicating authority has not applied independent mind for the reason that they have not examined on merit the aspect of the benefit pertaining to the Special Additional Duty of Customs (SAD) and Additional Duty of Customs - Countervailing Duty (CVD). The authority has also not examined in detail the Work in Progress (WIP) Register where no deficiency was found as per the statement of the learned counsel for the assessee-Appellants. Hence, we modify the impugned order and remand the matter for the limited purpose to examine the above mentioned aspects *de novo* i.e. benefit in computation as well as the amount mentioned in the Work in Progress (WIP) Register pertaining to the assessee-Appellants, as stated above, but by providing a reasonable opportunity to the assessee-Appellants to present their case with liberty to file additional documents, if any, as per law.

9. In the result, the appeals filed by the assessee-Appellants are partly allowed, as stated above, by way of remand. Both the Misc. Applications also stand disposed of accordingly.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay