IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/52861-52862/2016-CU(DB)

[Arising out of Order-in-Original No. 65-67/AK/CUS/JPR/2016 dated 16.08.2016, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

M/s. Gem India Exports **....Applicants**

Vs.

C.C.E. Jaipur-I **....Respondent**

Appearance:

Shri. Madhusudhan Sharma, Advocate for the Appellant
Shri K. Poddar, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 16.03.2017
Date of Pronouncement: 31.03.2017

FINAL ORDER NO. 52657-52658/2017-CU(DB)

Per V. Padmanabhan:

Both the appeals are being disposed of by this common order since the issue involved is the same.

2. The appellant imported preforms of precious and semi precious stones falling under chapter sub heading 7103 of the Customs Tariff Act through Air Cargo Complex, Jaipur and they claimed the benefit of entry no. 312 of the notification no. 12/2012-Cus dated 17.03.2012 which exempts rough semi precious stones. The appellant also paid concessional rate of duty of 2% under Sl. No. 313 in respect of cut and polished stones. It is also pertinent to

record that notification no. 12/2012-Cus was amended w.e.f. 01.03.2013 and a new entry no. 312A was inserted which granted concessional rate of duty of 2% for preforms precious and semi precious stones. Subsequent to such amendment Revenue issued show cause notice alleging that the appellant was not eligible for the nil rate of duty in respect of rough semi precious stones cleared on various Bill of Entry. In the proceedings which followed, both the original authority as well as the Commissioner (A) held that appellant was not eligible for clearance of nil rate of duty for preforms and ordered for payment of Customs duty. The tariff rate of 10% Customs Duty. Aggrieved by the impugned orders, the present appeals have been filed.

3. With the above background we have heard Shri. Madhusudhan Sharma, Advocate for the Appellant and Shri K. Poddar, DR for the Respondent.

4. The Ld. Counsel submitted that the dispute is with reference to the benefit of customs notification claimed for preforms of semi precious stones classifiable under CTH 7103. He submitted that for the period prior to the amendment in the notification w.e.f. 01.03.2013 the imported goods would be covered by the description “Rough semi precious stones”. He also submitted that preforms are nothing but rough semi precious stones which have been partially worked to give a uniform shape. Further, such preforms will have to be further cut and polished to make them ready to use in jewelry. W.e.f. 01.03.2013 there is no dispute that the preforms will be eligible for concessional rate of 2%.

5. Ld. DR countered the arguments made on behalf of the appellant. His submission is that the imported goods which are described as preforms have been extended a concessional rate of 2% only from the date of amendment of the notification. He further submitted that the imported goods cannot be considered as rough semi precious stones since they have already been partially worked upon. They also cannot be considered as cut and polished since a lot more work needs to be done on such preforms. Accordingly he prayed for upholding the impugned orders.

6. The dispute is with reference to the claim of benefit of customs notification no. 12/2012 dated 17.03.2012. For ready reference we reproduce below the relevant Sl. Nos. of the notification:

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard Rate
311	71	Rough coloured gemstones	NIL
312	71	Rough semi-precious stone	NIL
312A	7103	Preforms of precious & semi precious stones (inserted w.e.f. 01.03.2013)	2%
313	71	Cut and polished coloured gemstones	2%

It has been submitted that the imported goods 'preforms' are rough precious and semi precious stones which are partially worked upon to give them a uniform shape. Further, such preforms require further working to convert them into cut and polished stones. For the period prior to 01.03.2013, we find that the notification had two Sl. No. 312 & 313 which deal with the semi precious stones. Sl. No. 312 granted the benefit of 'nil' rate of customs duty for 'rough semi precious stones'. Sl. No. 313 granted the concessional rate of 2% for cut and polished gem stones. The category Sl. No. 312A has been inserted w.e.f. 01.03.2013 which subsequently covers preforms and grants the concessional rate of 2%.

For the period prior to 01.03.2013 (when the imports covered by the Bill of Entry in the present dispute took place) the imported goods will fall into either Sl. No. 312 or Sl. No. 313. The imported goods definitely do not merit categorizing under Sl. No. 313 since they are not in the nature of cut and polished stones. In our view the description 'rough semi finished stones' will cover anything which requires further working upon to render them as 'cut and polished'. These would cover gem stones of various levels of working right from rough stones. In this view of the matter the imported goods will fall under Sl. No. 312 as 'rough semi precious stones' since they need to be further worked upon to convert them into cut and polished stones. Consequently, they will be eligible for benefit of 'nil' rate of duty for the period upto 01.03.2013. There is no dispute for the period after the amendment carried out on 01.03.2013.

7. In view of the above discussions the impugned order is set aside and appeal is allowed with consequential benefit.

[Order pronounced in the open Court on 31.03.2017]

(V. Padmanabhan)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu