CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Customs Appeal No.C/137-142/2012-CU [DB]

[Arising out of Order-in-Original No.RT/ACE/74/2012 dated 07.02.2012 passed by the Commissioner of Customs (Export), New Delhi].

M/s.Sangam International
Deepak Mehta, Manager
Shashi Kumar Jain
Pankaj Solanki
Raman Solanki
Kishan Choudhry …Appellants

Vs.

C.C., Air Cargo (Export), New Delhi. … Respondent

Present for the Appellant : Mr.J.M. Sharma, Consultant
Present for the Respondent: Mr.Yogesh Agarwal, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision:15/05/2017

FINAL ORDER NO. __53585-53590/2017____

PER: S.K. MOHANTY

These appeals are directed against the impugned order dated 07.02.2012 passed by the Commissioner of Customs, New Delhi.

2. Brief facts of the case are that the appellant M/s. Sangam International is a SEZ Unit and licensed by the Development Commissioner to operate within NOIDA Special Economic Zone (NSEZ),NOIDA, U.P. On 14.01.2011, during the course of routine check at NSEZ Gate No.1, a vehicle bearing Registration No.UP16Y2306 driven by Shri Deepak Mehta, Manager of Sangam International was stopped and checked by the security staff of NSEZ. During the course of checking of the vehicle, it was detected by the security staff that 12 pieces of Yellow metal, which appeared to be gold bars of .995 purity was concealed in polythene cover and was kept inside the Car. Since the said consignment was not accompanied by any valid document, the Customs Department seized the goods contained in the polythene cover and proceedings were initiated against M/s. Sangam International and Others. The show cause notices issued to various persons (appellants herein) were adjudicated vide the impugned order dated 07.02.2012, wherein the goods (gold bars) were confiscated under Section 111 (e) of the Customs Act, 1962. Redemption fine of Rs.30,00,000/- was imposed in lieu of confiscation of those goods. The vehicle carrying the gold bars were also confiscated with option to redeem the same on payment of redemption fine of Rs.1,00,000/-. Customs duty of Rs.3,70,800/- involved on 12 gold bars was confirmed alongwith interest under Section 48 (1) ibid. Besides, penalties were imposed on the appellants herein.

3. The ld. Consultant appearing for the appellant submits that the proceedings initiated in this case for confiscation of the gold bars and jewellery and imposition of penalty are not in conformity with the statutory provisions, inasmuch as, the Customs Department did not have the jurisdiction within the SEZ area to initiate the proceedings under the Customs Act, 1962. To support such stand, the ld. Consultant has relied on the following judgments delivered by the judicial forum:-

1. Meenakshi International vs. CC (I & G), New Deli Final Order No.C/A/55037/2016-CU (DB) 2016 (11) TMI(851 CESTAT, New Delhi.
2. Bharat J. Gandhi Vs. Union of India – 2010 (257) ELT 168 (Gujrat).
3. Morgon Techtronics Vs. CC, New Delhi – 2015 (316) ELT 276 (T).
4. Charisma Jewellery Pvt. Ltd. Vs. Commissioner of Customs(Airport), Mumbai – 2016 (340) E.L.T. 221 (Tri.-Mumbai)

4. With regard to confirmation of duty demand of Rs.3,70,800/- alongwith interest, the ld. Consultant submits that the appellant is not contesting such liability and had deposited the duty alongwith interest and 25% of penalty before initiation of show cause proceedings by the Department. However, his prayer in this appeal is confined to confiscation of gold bars and jewellery and imposition of penalty and redemption fine in the adjudication order.

5. On the other hand, the ld. D.R. appearing for the respondent - Revenue submits that since the vehicle was intercepted and checked at gate No.1, which was about to leave the SEZ area, it cannot be said that the goods were seized within the SEZ area, in order not to fall under the purview of the Customs Act, 1962 for confiscation and for imposition of penalties. He further submits that since the gold bars were meant for supply to a Mumbai based party as per the statement recorded from Mr. Mehta, it can be fairly concluded that the intention of the appellant was to carry the goods to outside the SEZ area and accordingly, proceedings initiated under the Customs Act are proper and justified. With regard to applicability of the decision of this Tribunal in the case of Meenakshi International (supra) to the facts and circumstances of the present case, the submissions of the ld. D.R. are that the ratio decided therein is not applicable inasmuch as, the facts were not clear whether the gold bars were seized by the Department within or outside the SEZ area.

6. Heard both sides and perused the records.

7. On going through the order passed by this Tribunal in the case of Meenakshi International (supra), we find that the Tribunal has allowed the appeal in favour of the appellant with consequential benefits, holding that the Customs did not have

jurisdiction within the SEZ area established under SEZ Scheme by Ministry of Commerce, Government of India and accordingly, proceedings cannot be initiated for confirmation of the adjudged demand. The relevant paragraphs in the said decision are extracted herein below:

> *"6. After considering the facts of the case and the submissions of both sides, we find that during the relevant period, the customs did not have necessary jurisdiction within the territory of Special Economic Zone. Hon'ble Gujarat High Court in Bharat J. Gandhi vs. Union of India 2010 (257) ELT 168 (Guj.) and Morgan Tectronics Ltd. vs. CC, New Delhi - 2005 (316) ELT 276 (Tri. Del.) make the matter clear. CESTAT, Delhi in the case of Morgan Tectronics (supra) has inter-alia in para 8 of its decision observed as under:*
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> > *"8. Moreover, in terms of the Section 53(1) of the SEZ Act, 2005, the SEZ is deemed to be territory outside the Customs Territory of India, and the goods imported were meant for the unit in SEZ Noida. In our view, the Commissioner of Customs, Air Cargo, New Customs House, New Delhi and no jurisdiction to confiscate these goods and impose penalty on the appellant and it is only the Joint/ Dy. Commissioner/ Asstt. Commissioner of Customs, in Noida SEZ Unit, who had the jurisdiction to take necessary action. For this reason also, the impugned orders are not sustainable."*
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> *6.1 Hon'ble Gujarat High Court in the case of Bharat J. Gandhi (supra) has inter-alia observed in its para 6 and 7 as under:*

"6. ... after SEZ Act, 2005 coming into force wherein specific authorities are provided. The Court is of the opinion that the Customs authorities seems to have been rendered functus officio so far as the matter pertaining to the conduct of a unit situated in SEZ is concerned.

7. In view of the decision of the Hon'ble the Apex Court in the matter of Whirpool Corporation vs. Registrar of Trade Marks, Mumbai (supra) until the authority issuing show cause notice is able to satisfy the Court about its 'locus standi' and its jurisdiction, authority cannot be allowed to usurp the power to issue show cause notice. Otherwise, the entire object and purpose of establishment of Special Economic Zone will stand frustrated'.

7. Considering the observations of Honble Gujarat High Court and CESTAT quoted above, we find that customs did not have jurisdiction within Special Economic Zone established under SEZ scheme by the Ministry of Commerce, Government of India and present proceedings initiated by the customs were beyond jurisdiction. Therefore, impugned order is without proper authority of law and is hereby set-aside. Appeal is allowed with consequential relief to the appellant."

8. With regard to the submissions of the ld. D.R. that seizure of gold within the SEZ area was not the issue decided in Meenakshi International (supra), we find that the principle decided by the Tribunal in the said case confines to the jurisdiction of Customs Authorities to seize the goods within the SEZ area and to proceed further for initiation of proceedings under the Customs Act, 1962. Since this Tribunal has decided the issue holding that the Customs Authorities did

not have the jurisdiction to do so, we are of the view that the issue decided in Meenakshi International (supra) is squarely applicable to the facts of the present appeals. Further in the present case, since the seized goods were intercepted and taken possession at gate No.1 within the SEZ area, on this ground also, the proceedings initiated by the Customs will not hold good for confiscation of goods and imposition of penalties.

9. However, considering the fact that the appellant is not contesting the customs duty liability and interest amount confirmed in the adjudication order, we set aside the impugned order to the extent of confiscation of the gold bars, gold jewellery, vehicle and imposition of redemption fine and penalties on the appellants.

10. The appeals are disposed of in the above terms.

[Dictated and pronounced in the open Court)

(V.PADMANABHAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita