CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 08.06.2017

Appeal No.E/1460/2011 & E/2052/2011-EX[SM]

[Arising out of the Order-in-Appeal No.101/CB/CE/JPR-II/2011 dated 26/04/2011,& 148/CB/CE/JPR-II/2011 dated 12/07/2011 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur.)

M/s Fateh Granites Ltd (100% EOU), Appellant
M/s Shree Ram Granites

Vs.

CCE,Jaipur II … Respondent

Appearance:

Present Shri Shri. O.P. Agarwal, Const.for the appellant
Present Shri K. Poddar, AR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 54134-54135/2017

Per Ashok K. Arya :

1. The appellants namely *M/s Fateh Granites* Ltd(100%EOU) and *M/s Shri Ram Granites (100% EOU)* have filed these two appeals (No. 1460 and 2052 of 2011) against respective Order in Appeal No. 101/2011 dated 31/3/2011 and 148/2011 dated 12/07/2011 whereunder inter alia the demand of duty of Cental Excise along with interest for the goods cleared under bored for export, and which were destroyed because of an accident before reaching the port of shipment, has been confirmed.

2. The brief facts in both the appeals are that:

i. Both the appellants were working as EOU for manufacturing 'granite slabs' for export. They cleared their goods in container under Central Excise seal for export under ARE-1 to be exported through Mundra Port.

ii. In case of these exports belonging to the appellants, the containers carrying the export goods met with an accident and entire goods were broken; FIR was filed. Intimation was given to the Department about the accident and insurance company was also informed. These facts are not in dispute.

iii. The Department issued two show cause notices dated 27/4/2009 and 22/4/2010 demanding duty of Central Excise saying that remission for such destroyed goods is not in the rule.

iv. Show cause notices were adjudicated by the Orders in Original dated 10/03/2010 and 24/09/2010 confirming the demand of Central Excise Duty against such goods.

v. The appellant went in appeal before the Commissioner (Appeals) who inter alia sustained the demands confirmed by the respective Orders in Original.

vi. Therefore, appellants are now in appeal before the Tribunal against said Orders in Appeal.

3. With the background of above facts, both sides represented by Ld. Counsels, CA Sri O.P. Agarwal for the appellants and Shri K. Poddar for Revenue have been heard.

4. After having carefully considered the facts of the case and submissions of both the sides it appears that the matter is covered by the Larger Bench's decision of the Tribunal in the case of *M/s Honest Bio-Vet Ltd V/s CCE, Ahmadabad-I* 2014 TIOL 2286 CESTAT-Ahm.- LB and also by Tribunal's decision in the case of *Madhav Marbals and Granites Ltd. V/s CCE, Salem-2009(239) ELT 120 (Tri-Chennai*). The Larger Bench's decision of the Tribunal (supra) in this regard has observed as under:

> **14.** We are of the view that the goods cleared for export under Bond which were destroyed before the same could be exported, can be treated as having been destroyed before removal only. This would be the fair interpretation of the Rule 21 of the Central Excise Rules, 2002. Thus, primary condition of eligibility of Remission of duty on the destroyed goods is fulfilled as required u/r 21 of Central Excise Rules, 2002. Appellant is eligible for the Remission of duty in respect of goods for export under Bond which were destroyed before the same could be exported.
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> **15.** We find that the issue as referred to the Larger Bench, as now decided by the Hon'ble High Court of Gujarat in Tax Appeal No. 912 of 2012 decided on 25-7-2014. Accordingly, reference to the several precedents by the ld. counsel for the assessee and by the SDR, would be of academic interest, since the judgment of the Hon'ble High Court of Gujarat in the case of *Commissioner* v. *Dynamic Industries Ltd*. has considered the very same point which is in favour of the appellant.
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> **16.** In view of the foregoing, we hold that in cases where goods removed from factory for export under Bond are destroyed before export, due to unavoidable accident, then in such situation the goods destroyed are to be treated as having been destroyed before removal in terms of Rule 21 of Central Excise Rules, 2002.

4.1. Considering the observations of the Larger Bench of the Tribunal (supra) and Tribunal's decision in the case of *Madhav Marbals and Granites Ltd*. (supra), the impugned orders are set aside and both the appeals allowed.

[Order dictated and pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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