IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:14.08.2017

Customs Appeals Nos.703-706/2007
With C/CO/69/2008 (DB)

[Arising out of Order-in-Original No.12/2007 dated 13.06.2007 in Appeal No.C/703/2007, Order-in-Original No.13/2007 dated 13.06/2007 in Appeal No.C/704/2007, Order-in-Original No.14/2007 dated 13.06.2007 in Appeal No.C/705/2007 and Order-in-Original No.15/2007 dated 13.06.2007 in Appeal No.C/706/2007, passed by the Commissioner of Customs, Jodhpur, Jaipur]

CC, Jaipur-I Appellants

Vs.

Om Shree Exports Respondent
The Gem Palace
Valentine Jewellery (I) Pvt. Ltd.
Rare Gems & Jewellery

<u>Appearance</u>:

Rep. by Shri Govind Dixit, DR for the appellant.
Rep. by none for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Orders Nos.55992-55995/2017

<u>Per B. Ravichandran:</u>

These four appeals by Revenue are on the common issue and hence are taken up together for disposal.

2. Ld. AR elaborated the grounds of appeal, contesting the findings of the Original Authority. The dispute is with reference to application of concessional rate of duty in terms of notification no.62/2004-Cus dated 12.05.2004 on the items imported by the various respondents. The goods imported were declared as "18 KT Gold Mountings" and on due assessment, the concession claimed was allowed to the respondent, considering that the items imported as "Gold

Mountings". Subsequently, show cause notices were issued, for re-classification of the product, which was already assessed and cleared. The proposal was to reclassify the items as semi-finished gold jewellery, which are not eligible for the benefit under the said notification. The cases were adjudicated resulting in the impugned orders. The Commissioner held that the assessments were made based on the declarations in the bills of entry and the clarification C.No.258/18/2004,Cus dated 2.8.2005 vide Circular No.40/2004- Cus dated 4.6.2004 issued by the Board is available with the assessing officer. He dropped the proceedings initiated by the show cause notices.

3. Ld. AR contested the findings in these orders and submitted that the imported items are nothing but gold jewellery in terms of explanation to the said notification. The said notification along with the classification note is applicable for gold and silver articles under Chapter 71 of the Tariff. He submitted that Original Authority should have given detailed findings as to why he accepted the claim of the importers and rejected the proposals in the notice. In absence of such detailed findings, the Revenue is aggrieved.

4. None appeared on behalf of the respondents in spite of notice.

5. We have heard ld. AR for the appellant/Department and examined the appeal papers. The dispute in the present appeals relates to concession relating to items, which are declared as "18KT Gold Mountings" and the case of the Revenue is that they should be considered as "Articles of Jewellery" not eligible for concession under the said notification. In fact, on examining the show cause notice, which was issued much after the clearance of the goods on due assessment, the Original Authority held that the proposal for denying the concession is based

on mere presumption that the goods imported were not mountings. The impugned order recorded that the how to interpret the terms “Mounting” and “Jewellery” have been clarified by the Board as mentioned above. In the face of the declarations made in the bills of entry as well as description of the gods in the import invoices, we note that a change in the categorization of the imported goods cannot be made in absence of the material facts to the effect that the declarations made in the bills of entry or the description in the import invoices are incorrect or deliberately mis-declared.The declarations as per the documents and the goods in physical form were available at the time of assessment and the goods were cleared after such due assessment. We find that in the present appeals, the categorization of assessed goods were sought to be changed only on the interpretation of various terms and the same was not based on clear material supporting evidence. In absence of such evidence, we agree with the impugned orders that no denial of exemption can be agreed upon on the basis of the presumptions and interpretative, post-clearance of the goods, after due assessment.

6. In view of the above analysis, we find no merit in the appeals by the Revenue. Accordingly, the same are rejected. The C.O. in Appeal No.C/706/2007 is also disposed of.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.