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

Customs Appeal No. 50789 -50791 of 2017

[Arising out of Order-in-Appeal No. 016-018/2017 dated 16.3.2017. passed by the Commissioner of Central Excise(Appeals), Jaipur]

M/s. Sun Gems Ltd. **Appellant**
M/s. Suhani Gems
Shri Sunil Batwara

Vs.

Commissioner of Central Excise **Respondent**
Jaipur I

Appearance:

Shri B L Sharma, Consultant for the Appellants
Shri K Poddar, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : 10.08.2017
Date of Decision : 11.09.2017

FINAL ORDER NO. 56478 -56480/2017

Per: V. Padmanabhan:

Appellants have filed against the order in appeal 016-018/2017 dated 16.3.2017. Investigations were undertaken by the Customs department into imports made by M/s Suhani Gems and M/s. Sun Gems, Jaipur. They had imported cut and polished semi-precious stones including cubic Zirconia as well as imported packing materials bearing brand names “Korean Star”, “Starlite”, “Decent” and “Swiss Star”.

2. The semi-precious stones of sizes 1 mm – 3mm were imported from Hong Kong through Air Cargo Complex, Jaipur. However, the branded packing material was separately imported through Foreign Post Office, Jaipur. After search of business premises as well as residence of Shri Sunil Batwara, partner, scrutiny of recovered record as well as recording the statement of Shri Sunil Batwara, the department came to the conclusion that the imported consignment of cubic zirconia of various sizes were packed in normal packing pouches without bearing any brand name but at under-valued prices. The branded packing material, imported separately, was used to pack the semi-precious gems before selling in the local market with the brand names. The department ascertained the true value of imported goods on the basis of valuation report given by the Committee appointed by the Commissioner of Customs and proceeded to confiscate the goods seized at the appellant’s business premises. The original adjudicating authority allowed redemption of the confiscated goods on payment of fine and penalties and also demanded differential

duty because of under-valuation. When the issue was carried to the Commissioner (Appeals), he upheld the lower authorities' order. Aggrieved, the present appeals have been filed by both, appellant firms as well as Shri Sunil Batwara, partner which are being decided through this common order.

3. With the above background, we heard Shri B L Sharma, consultant on behalf of the appellants and Shri K Poddar DR for the Department.

4. Learned Counsel for the appellants submitted that the valuation of the seized goods was not done properly. He argued that the Valuer Shri Rajesh Dhamani had indicated the value of gems of size 3.5 mm to 8 mm whereas the goods seized were of sizes 1.00 mm to 3.00 mm. He further challenged the valuation adopted by the Committee dated 15.1.2013 by stating that the report has not been made RUD and supplied to the appellants. Accordingly, he submitted that basis for confiscation as well as demand for differential duty is not valid. Accordingly, he prayed that the order may be set aside.

5. Learned DR justified the impugned order. He submitted that both the appellant-firms have carried out the well thought strategy for under valuing the imported gems. He submitted that branded gems of higher value was imported, but the packing material bearing the brand

name was obtained separately vide Foreign Post parcel. Accordingly, he justified the confiscation of the imported goods.

6. Both the appellant firms have imported semi-precious gems cubic Zerconia of all sizes from 1.00 mm to 3.00 mm. During the search of the appellants premises, such semi-precious stone as well as imported packing material were found and seized. The appellants were found to pack the imported gems in the plastic pouches bearing brand names, ‘Korean’, ‘Star’, ‘Starlite’, ‘Decent’, and ‘Swiss star’ with a view to selling at a higher price. The above facts as well as the factum that imported gems were imported by under-valuing has also been admitted by Shri Sunil Batwara, partner. Though the allegation was made that the statements were recorded under duress, it has been found to be without basis by the lower authorities since no retraction of any of the statements were ever made by Shri Sunil Batwara. From the above facts, the modus operandi adopted by the appellants stand established.

7. The declared transaction value in the Bill of Entry have been rejected by the lower authorities. In the light of the fact that branded gems were imported separately and the corresponding packing material, with the brand names to be used for vacuum packing, have been imported separately. During search, the departmental officers also found the gems being packed in such packing material to be sold at

higher prices. The under-valuation of the imported gems also stand admitted by the partner. We find that the above facts give full justification for rejection of the assessable value.

8. The revaluation of the imported goods has been done by the duly constituted Committee by the Commissioner of Customs. We note that the Valuation Committee was constituted in pursuance of Rule 9(1) Rule 6 and Rule 4(1) of Customs Valuation Rules and the opinion of experts were also obtained. We also find that the Committee consisted of experts comprised of Shri Sachin Gupta of M/s. Govind Gems, Jaipur, Shri Mahesh Khandelwal of M/s R K Impex, Jaipur and Shri D K Bangad, Assistant Commissioner (Audit), Customs, Jaipur to determine the correct value of the samples of Cubic Zirconia of sizes 1.00 MM to 3.00 MM imported by Shri Sunil Batwara in his firms. It was found that out of these three members, majority of two members was from the trade who were expert in examining the grade, quality of stones and true prices thereof. Thus, the opinion of independent experts was duly obtained for arriving at the correct assessable value. It was also observed that Shri D K Bangad, apart from being an officer, was also a qualified stones expert and since he was not anyway involved in the investigation / adjudication of this case, he was also an independent Member.

9. Since the under-valuation also stand admitted by Shri Sunil Batwara, partner, we are of the view that the valuation of the imported goods has been done as per law.

10. In view of the above discussions, we find no infirmity in the impugned order. It is upheld and the appeals dismissed.

(Pronounced in the open Court on 11.09.2017)

(Justice (Dr.) Satish Chandra)	**(V. Padmanabhan)**
President	**Member (Technical)**

ss