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

Customs Appeal No. 53070 of 2016

[Arising out of Order-in-Appeal No. 77(AK) CUSTOMS/ JAIPUR/2016 dated 06.09.2016 passed by the Commissioner (Appeals), Central Excise, Jaipur]

M/s. Vaibhav Global Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur

Appearance:

Shri Kumar Vikram, Advocate for the Appellants
Shri R K Majhi, AR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing /Decision : 12.03.2018

FINAL ORDER NO. 50999 /2018

Per: B Ravichandaran:

The appellant is aggrieved by the order dated 6.9.16 of the Commissioner (Appeals) of Customs, Jaipur. The appellant imported pre-forms semi precious stones through three Bill of Entries dated 04.08.2012, 03.11.2012 and 11.12.2012. The classification was claimed under CTH 7103 9990 as other of otherwise worked precious stone, semi-precious stone etc. under main heading 7103. They have claimed assessment of rate of duty of 2% in terms of Sl. No. 313 of Notification No. 12/2012 Cus dated 17.03.2012. The assessment was done by the importer and goods were cleared. The department noticing that the assessment made by the importer is not correct, initiated proceedings for reassessing the goods. The Revenue sought to classify the product as 'other' category under the main heading but as intermediate stage between 'rough' and 'cut and polished' semi precious stone. By classifying the product as partly cut, the department sought to deny the exemption available to rough stone as well as cut and polished stone. Accordingly, proceedings were initiated to demand and recover the differential customs duty with a proposal to confirm the rate of duty at 10%. The appellant resisted the demand. The original authority as well as first appellate authority confirmed the view of the Revenue by holding the product as semi-worked and cannot be considered either as totally 'rough' or 'cut or polished' stone. Support was drawn from later amendment of notification by Notification No. 13/12-Cus dated 12.11.2013 dated 01.03.2013. The said notification specifically inserted S. No. 312 A for pre-form of precious and semi-precious stone with rate of duty of 2% . Since these imports were prior to that date, Revenue held that no concessional rate was available and accordingly, lower authorities confirmed the demand of 10% on the said goods.

2. We have heard the parties and perused the appeal record.

3. The claim of the appellant is that their product should continue to be treated as rough gem stone only and whatever working done on the same is incidental for due packing and export. The process of cutting and polishing is done after import only. On that basis, it is claimed that they should be fully eligible for exemption as available to rough semi-precious stone under Serial number No. 312 of unamended notification 12/2012 Cus. We note that the actual nature of the product and the exemption, if any, available during the material time have been examined in detail by the impugned order. Relevant finding of the same are as under:

> ***13.2 I find from the customs tariff that 'unworked or simply sawn or roughly shaped semi precious stones' are classified under CTH 71031029 and 'semi precious stones otherwise worked' are classified under 71039990. I find that the rough semi-precious stones is the stage when the stone is mined from the earth; is uncut, unset and having no regular form. That 'otherwise worked' is the stage when the semi-precious stones is cut and polished. That, Pre-form is an intermediate stage between 'Rough' and 'cut and polished' gemstone. That the Pre-forms in question fall in the category of 'semi precious stones otherwise worked' as it possesses the characteristics of cut work done on it to give it a provisional shape and the same is classifiable under 71039990. Therefore, CTH 71039990 covers both 'semi-precious stones otherwise worked (cut and Polished)' and 'pre forms of semi precious stones (cut and provisionally shaped unpolished)' .***

It is perhaps for this reason that the appellant classified such goods under CTH 71039990 in their Bills of Entry under question in this appeal. Now the question arises whether the benefit given at S.No. 312 and 313 of Notification No. 12/2012-Cus dated 17.3.2012 can be given to 'preforms semi precious stone'.

13.3 I find that the appellant has imported and cleared the 'performs semi precious stone' by availing the benefit under exemption notification No. 12/2012 dated 17.03.2012. I also find that the said notification was further amended vide notification No. 12/2013 dated 01.03.2013 wherein a new entry No. 312 A had been inserted. This new entry No. 312A reduces the basic customs duty on performs of precious and semi-precious stones from 10% to 2%. Now question arises whether performs of semi precious stones attracted tariff rate of 10% or concessional rate of duty of 2% during the period 17.3.2012 to 28.02.2013. I find that in the notification no. 12/2012 at S. No. 312. The duty on rough semi precious stone was nil and at S. No. 313 duty @ 2% was leviable on cut and polished coloured gem stone. There is no concession / exemption granted to 'preforms semi precious stone'. This is also evident from the fact that wef 01.03.2013 the duty on performs of precious and semi precious stones was prescribed 2 2% under Notification No. 12/2013. This clearly shows that prior to 01.03.2013 duty applicable on performs of semi precious stone was the tariff rate of duty i.e. @10%. Even if it is assumed that prior to 01.03.2013 the duty was nil on performs as claimed by the appellant then there was no need to amend the notification no. 12/2012 by inserting entry no. 312A in the notification. Further entry no. 312 of above notification pertains to rough semi precious stone whereas

perform is different in character than the rough stone. I therefore, hold that during 17.3.2012 to 28.2.2013 the applicable duty on perform of semi-precious stones was @ 10% i.e. tariff rate of duty and the adjudicating authority has correctly demanded the same."

4. On careful consideration of the above factual findings, we note that the case of the appellant that the product should be considered as rough gem stone is not sustainable. Infact as correctly pointed out in the impugned order, the later amendment carried out by notification No. 12/13 brings more clarity to the issue. Accordingly, we hold that pre-forms imported by the appellants are not covered by any concessional rate of duty during the period of import.

5. As such, we find no reason to interfere with the findings by the lower authorities. The appeal is dismissed.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra) — **President**

(B Ravichandaran) — **Member(Technical)**

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