IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: C/1228 & 1229/2008

[Arising out of Order-in-Original No: CC/PMS/42/2008 ADJ.ACC dated 29th August 2008 passed by the Commissioner of Customs (Exports), Air Cargo Complex, Mumbai.]

Unity Diamonds
Romy P Mehta …***Appellants***

versus

Commissioner of Customs (Exports),
Air Cargo Complex, Mumbai ***…Respondent***

Appearance:

Ms Pooja Reddy, Advocate for appellant

Shri SJ Sahu, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 13/06/2017
Date of decision: 13/06/2017

ORDER NO: A/ 92308-92309 / 2017

M/s Unity Diamonds had imported two consignments of 'diamond studded steel wristwatches' valued at ₹ 48,21,262 for 643 pieces in May and October 2005on which duty of ₹ 36,61,639 was discharged. These are claimed to have been imported from M/s

Billion City, Hong Kong against invoices and packing lists that had been submitted at the time of assessment. On the plea that these did not find a ready market in India, 627 pieces were sought to be exported on 16th May 2007 against claim for drawback of ₹ 35,06,241 under section 74 of Customs Act, 1962. Consequent upon investigation, and on the ground that there was sufficient evidence of the goods entered for export not being the same as those imported, the claim for drawback was rejected, the goods confiscated with fine of ₹ 8,00,000 imposed in *lieu*, and penalties of ₹ 4,00,000 and ₹ 1,00,000 imposed on exporter and on the partner, Shri Romy P Mehta, respectively *vide* order-in-original no. CC/PMS/42/2008 dated 29th August 2008 of Commissioner of Customs (Exports), Air Cargo Complex, Mumbai. The exporter and the partner are in appeal.

2. The appellants contend that the adjudicating authority had not placed any consideration on the evidence submitted by them of the exported goods being the same as those imported and that suppositions and presumptions were the basis for the action taken against them. The details that were found to be deficient at the time of export were not available in the import documents; this, according to them, would not serve to further the findings of the original authority. It is also their contention that the descriptions, more details and other particulars sufficient to identify the export goods were made available to the officers but discarded without consideration. Furthermore, the

finding in the impugned order that the markings which had been affixed at the time of import were missing was assailed for not being in accord with the practice in vogue at the time of import. The manner in which evidence presented by the witness during cross-examination was discarded by the adjudicating authority was also challenged for being inappropriate.

3. Learned Counsel for appellants places reliance on the decision of the Government of India in *Collector of Customs v. Madura Coats [1993 (68) ELT 270 (GOI)]* and in *Star Wire (India) Ltd [2011 (272) ELT 448 (GOI)]* as well as the prescription in Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 along with the various documents relating to import and export to contend that the impugned order was not in conformity with law. Learned Authorized Representative reiterated the contents of the impugned order.

4. On a perusal of the documents, it is seen that material detail pertaining to the import and export consignments do exist. It is also seen that the impugned order had not ventured to examine whether these do match. In *re Madura Coats*, it was held that

> *'4. After carefully going through the case it is observed that essential requirement of Section 74 ibid is that the goods should be identified to the satisfaction of the Asstt. Collr. to be the same as the goods which were imported. Normally this satisfaction is reached by inspection of the goods/packages,*

> *comparing the examination report or other connected documents relating to import formalities with examination of goods as reflected in the shipping bill against which drawback is claimed.'*

and in *re Star Wire (India) Ltd* that

> *'9. Government notes that the description of the goods as given in all the import tallies with the description given in export documents. The foreign remittance is also received as per B.R.C. These facts are not disputed by the department. The marginal difference in weight which is less than 0.5% can be considered as weighment error. Department is relying only on the point that in the absence of any description marks/numbers on the scrap the identity of re-exported goods cannot be established with that of imported goods. Here, it is noted that imported and exported scrap is of same description and weight and in the absence of marks and numbers, the corroborative documentary evidence has to be relied upon. There is a sufficient corroborative evidence in the form of correspondence between applicant and supplier of goods to show that imported goods have been exported. There is no contrary evidence with the department. Application has also relied upon GOI Revision order No. 226/93, dated 21-6-93 in the case of C.C. v. Mudura Coats - 1993 (68) ELT 270 (GOI) wherein it was held that essential requirement of Section 74 ibid is that the goods should be identified to the satisfaction of Assistant Collector to be the same goods which were imported. Normally, this satisfaction is reached by inspection of the goods/packages, comparing the examination report or other connected documents relating to import formalities with examination of goods as reflected in the shipping bill against which drawback is claimed. In the said revision, Government had held that if there is corroborative documentary evidence*

to establish that the goods which were wrongly despatched/imported have been re-exported, the identity of goods gets established.'

5. In view of the above decisions, it would appear that a proper appreciation of the details available for ascertainment is not demonstrated. To fulfill this requirement, the impugned order is set aside the matter remanded that the original authority for the fresh decision.

6. The appeals are allowed on the above terms.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*