

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85551 of 2018

(Arising out of Order-in-Original No.CC-NC/04/2017-18ACC (Adj) (G) dated 17.11.2017 passed by the Commissioner of Customs (General)-V, ACC, Sahar, Andheri (E), Mumbai)

M/s Neysa Jewellery Ltd
Formerly M/s Shreeji Jewellery Ltd
G-36, GEM & Jewellery Complex, SEEPZ,
Andheri (E), Mumbai – 400096.

.... Appellant

Versus

Commissioner of Customs (General)-V
Air Cargo Complex, Sahar,
Andheri (E), Mumbai – 400099.

.... Respondent

With

Customs Appeal No. 85552 of 2018

(Arising out of Order-in-Original No.CC-NC/04/2017-18ACC (Adj) (G) dated 17.11.2017 passed by Commissioner of Customs (General)-V, ACC, Sahar, Andheri (E), Mumbai)

Shri Nagjibhai Patel
Flat No. 900, Shanudeep Bldg, Mafatlal House,
Altamount Road, Mumbai – 400026.

.... Appellant

Versus

Commissioner of Customs (General)-V
Air Cargo Complex, Sahar,
Andheri (E), Mumbai – 400099.

.... Respondent

And

Customs Appeal No. 85574 of 2018

(Arising out of Order-in-Original No.CC-NC/04/2017-18ACC (Adj) (G) dated 17.11.2017 passed by the Commissioner of Customs (General)-V, ACC, Sahar, Andheri (E), Mumbai)

Shri Anand Sanghavi
11, Raj Radhika Bldg, 2nd Floor, Opp. Suvarna Hospital,
Kastur Park, Simpoli, Borivali (W), Mumbai – 400092.

.... Appellant

Versus

Commissioner of Customs (General)-V
Air Cargo Complex, Sahar,
Andheri (E), Mumbai – 400099.

.... Respondent

And

Customs Appeal No. 85575 of 2018

(Arising out of Order-in-Original No.CC-NC/04/2017-18ACC (Adj) (G) dated 17.11.2017 passed by the Commissioner of Customs (General)-V, ACC, Sahar, Andheri (E), Mumbai)

Shri Nimesh Sanghvi

.... Appellant

801, Saraswati Sadan, Hindu Friends Society Road,
Jogeshwari (E), Mumbai – 400060.

Versus

Commissioner of Customs (General)-V

.... Respondent

Air Cargo Complex, Sahar,
Andheri (E), Mumbai – 400099.

And

Customs Appeal No. 85576 of 2018

(Arising out of Order-in-Original No.CC-NC/04/2017-18ACC (Adj) (G) dated 17.11.2017 passed by the Commissioner of Customs (General)-V, ACC, Sahar, Andheri (E), Mumbai)

Shri Mohit Shah

.... Appellant

301, Sheetal Apartments, 191, Azad Road, Gundavali,
Andheri (E), Mumbai – 400069.

Versus

Commissioner of Customs (General)-V

.... Respondent

Air Cargo Complex, Sahar,
Andheri (E), Mumbai – 400099.

And

Customs Appeal No. 85675 of 2018

(Arising out of Order-in-Original No.CC-NC/04/2017-18ACC (Adj) (G) dated 17.11.2017 passed by the Commissioner of Customs (General)-V, ACC, Sahar, Andheri (E), Mumbai)

Shri Vikram Parmar

.... Appellant

C/O. Ms Shreeji GEMS Ltd, Office No-AW2111,
BDB. B.K.C., Bandra (E), Mumbai – 400051.

Versus

Commissioner of Customs (General)-V

.... Respondent

Air Cargo Complex, Sahar,
Andheri (E), Mumbai – 400099.

Appearance:

Shri Anil Balani, Advocate for the Appellants

Shri S.K. Hatangadi, Authorized Representative for the Respondents

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85108-85113/2023

Date of Hearing: 30. 01.2023

Date of Decision: 30. 01.2023

Per: Anil G. Shakkarwar

Above stated six appeals are being taken up together for decision since they are arising out of common impugned Order-in-Original dated 17.11.2017 passed by the Commissioner of Customs.

2. Brief facts of the case are that M/s Neysa Jewellery Ltd. formerly known as Shreeji Jewellery Ltd. were engaged in the business of export and were operating from Santacruz Electronics Export Processing Zone (SEEPZ), Mumbai. Other appellants are persons associated with M/s Nyesa Jewellery Pvt. Ltd. The appellants were engaged in the manufacture and export of gold jewellery studded with diamonds. On 11.03.1998, on suspicion, the Customs Officer intercepted one auto rickshaw which was coming out from the warehouse gate of SEEPZ. One Shri Kamal Singh, employee of the appellant was found sitting in the said auto rickshaw and was carrying three plastic packets. On examination, it was found that the said packets were containing electronic goods. Therefore, under a panchanama the said electronic goods were seized. Further, an enquiry was conducted at the premises related to the appellant and various statements were recorded. Stock taking was done at the business premises of the appellant. It appeared to Revenue that 89.15 carats of diamonds which were imported were found short in the stock maintained by the appellant

on 12.03.1998. Subsequently on 14.03.1998 through a panchanama, Customs officer seized 1095.48 carats of diamonds available in the business premises of the appellant alleging that the same were substitute of original imported diamonds. A show-cause notice dated 07.09.1998 was issued on the basis of above stated investigation and various statements recorded. Through the said show-cause notice, customs duty was demanded on 1095.48 carats and 89.15 carats of diamonds. The show-cause notice was adjudicated and the said adjudication order was carried before this Tribunal. The appeal in this Tribunal was dealt with in Appeal No. C/434 to 439/2005-Mum and was disposed of through Final Order No. A/486 to 491/2012 dated 11.06.2012. Through the said final order dated 11.06.2012, this Tribunal had found that the earlier adjudicating authority had not considered correlation produced by the appellants regarding whether the imported diamonds were actually used in the manufacture of exported jewellery or not. This Tribunal had further observed that before arriving at the conclusion as to whether there was substitution of diamonds, the original authority was required to verify the correlation between imported diamonds and exported jewellery. This Tribunal in the said order has observed that the said facts could also be ascertained from the purchase invoice and sales invoices/stock-in-hand by verifying the description of goods such as grade, colour, shine etc. Therefore, the matter was remanded for *de novo* adjudication. In the *de novo* adjudication, Order-in-Original was passed which was challenged before this Tribunal. This Tribunal vide its final order No. A/1595-1600/2014/CSTB dated 24.09.2014 had taken note that the appellant had submitted evidence to the original authority by way

of submitting copies of Bills of Entry under which they had imported the goods and also accounts which they had maintained in respect of imports as well as consumption thereof. This Tribunal has observed that the only ground of non-acceptance of such evidence by the original authority was that the connected documents were not attested. The said observation of original authority was not appreciated by this Tribunal for the reason that respondent also maintained records of exports and imports undertaken by the appellant and it was possible for the original authority to find out from the records maintained by the respondents. Therefore, the matter was once again remanded for de novo adjudication with a direction that seized goods should be re-tested by a member of approved panel from the Department's list so as to establish the identity of the seized diamonds with respect to cut, clarity, caratage and also Department should verify from their own records whether the details furnished by the appellant with regard to imports are correct or not and after giving opportunity pass a fresh order. Again the Order-in-Original was passed, which was challenged before this Tribunal. The appeal arising out of the said order was decided vide Final Order No. A/87433 – 87438/2017-CB dated 19.05.2017. The direction of this Tribunal in the said order dated 19.05.2017 in para 9 to 11 are reproduced below: -

"9. We take note of the contention of the Learned Counsel that the adjudicating authority was unable to provide them with records in accordance with the remand order of the Tribunal. The reasons for the lack of availability of the records has been noted in the impugned order. At the same time, we are conscious of the circumstances in which the Tribunal had ordered that the submissions of the appellant be verified from departmental records. It would appear that the appellant had submitted copies of bills of entry of imported goods as well as the accountal of consumption of

imported goods. However, these were not accepted by the adjudicating authority on the former occasion as they were held to be unauthenticated. Hence the specific direction for verification.

10. It is now clear from the impugned order that the records are not available for verification. However, the data document submitted by the appellant can be subject to computation for arriving at the stock of goods-in terms of cut, clarity, caratage - that should be available. That, at least, should have been attempted by the adjudicating authority before coming to its conclusion. The adjudicating authority could have afforded further opportunity to the appellant to substantiate, with other evidence, that the missing stock is fully accounted for. Efforts could also have been made to obtain corresponding records from the office of Development Commissioner. Without an appropriate finding on this aspect, we are hamstrung in rendering justice in accordance with law. The adjudicating authority is directed to complete this process within three months.

11. To enable such ascertainment, it is only fitting that the impugned order be set aside and the matter remanded to the original authority for hearing the appellants afresh, consider the submissions and to arrive at a conclusion on the allegations leveled in the show cause notice."

In compliance of the said final order dated 19.05.2017, impugned order was passed. Through the impugned order, 997.09 carats of diamonds and 98.34 carats of diamonds under seizure were confiscated and allowed to be redeemed on payment of fine of Rs.10 lakhs. The goods seized at gate of SEEPZ were confiscated and allowed to be redeemed on payment of fine of Rs.30,000/-. Demand of customs duty of Rs.52,45,104/- on 1184.61 carats of diamonds and customs duty of Rs.1,69,746/- on capital goods found short was confirmed and all the appellants were imposed with penalties. Aggrieved by the said order, all the appellants are before this Tribunal.

3. Learned Counsel for the appellant Shri Anil Balani has submitted that there were specific directions by this Tribunal to the

adjudicating authority in respect of diamonds which were alleged to be substituted to carry on the identification of the same on the basis of stock available with the Department under seizure and also to verify the records maintained by the Department as well as that by the appellant to ascertain whether allegation of substitution of diamonds was established through the evidence. The learned Counsel for the appellant has brought the attention of this Bench to para 11.2.1 of impugned order, wherein it has been held by the original authority as under: –

“I also find that it is very difficult to identify whether diamonds available in stock were same in respect of stock procured in DTA by the noticee and even if the invoices are available it could not have held much as it does not have any marking/serial number unlike products namely, Televisions, Motor Vehicle etc.”

He has submitted that the Department has undertaken valuation of the diamonds under seizure and demanded customs duty. He further submitted that for the period from 01.04.1994 to 11.03.1998 the appellant had imported 4285.43 carats diamonds and exported goods containing 2790.92 carats of diamonds and 89,15 carats of diamonds found short was processing loss, which is marginal and unavoidable.

4. Heard the learned Authorized Representative for the Revenue, who has supported the impugned order.

5. We have carefully gone through the records of the case and submissions from both sides.

6. We have perused the Order-in-Original particularly para 11.2.1, wherein the original authority has held that the diamonds did not have marking and serial number unlike products namely, Televisions, Motor Vehicles etc. and therefore, it is not possible to identify whether diamonds available in the stock were same as imported. The same argument also applies to the goods which were seized under reasonable belief that they were substituted. Applying the observation by the original authority that it is not possible to identify diamonds whether the same are imported or substituted, we come to a conclusion that the seizure of diamonds under the allegation that they were substituted, was on a erroneous belief that they were substituted as such a belief cannot be established for the same reason which is given by the original authority. Therefore, we find no merit in the seizure of 1095.43 carats of diamonds and subsequent proceedings in respect of the same including confiscation, imposition of redemption fine, demand of differential customs duty and imposition of penalty on the appellants. Insofar as shortage of 89.15 carats of diamonds is concerned, the same is argued to be treated as processing loss. The prosecution has failed to establish any clandestine removal of the same and could identify the person to whom the same were allegedly sold or transferred. In view of the failure of the prosecution to establish any clandestine removal of 89.15 carats of diamonds, we hold them to be processing loss and since the same are not taken out of SEEPZ, i.e. out of Bond customs duty cannot be demanded on the same.

7. In view of our above findings, we set aside the impugned order and allow all the appeals.

(Operative portion of the order pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Sinha