

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

WEST ZONAL BENCH

Customs Appeal No. 85073 of 2020

(Arising out of Order-in-Appeal No. MUM-CUSTOM-APSC-APP-601/2019-20 dated 31.10.2019 passed by the Commissioner of Customs (Appeals), Mumbai III)

M/s. Dinal Diam

.....Appellant

**JW-4180 Bharat Diamond Bourse,
Bandra Kurla Complex,
Bandra (East), Mumbai**

VERSUS

**Commissioner of Customs, Air Special
Cargo**

.....Respondent

**APSC Bandra Kurla Complex,
Bandra East, Mumbai**

APPEARANCE:

Shri Mohit Prabhakar, Advocate for the appellant
Shri Ram K. Dahiya, (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/85965/2023

DATE OF HEARING : 22.12.2022
DATE OF DECISION : 19.06.2023

Per: AJAY SHARMA

This appeal has been filed by appellant from the impugned Order dated 31.10.2019 passed by the Commissioner of Customs (Appeals), Mumbai III by which the appeal filed by Revenue was allowed by setting aside the Order-in-Original dated 20.11.2018 which was in favour of Appellant/assessee.

2. The appellant-M/s. *Dinal Diam* filed Shipping Bill No. 7113074 dated 24.8.2018 for export of cut & polished diamonds to M/s. JDM Import Co.Inc. USA duly supported by Export Invoice No. 43/2018-19 dated 24.8.2018. 'Let Export Order' for goods covered under the said shipping bill was granted on 14.8.2018, however after the export was completed it was noticed by the exporter i.e. appellant herein that while preparing the checklist inadvertently they entered the name of exporter as *Dinal Diamonds* instead of the correct name i.e. the name of the appellant and accordingly vide letter dated 4.9.2018 they requested for amendment in the aforesaid shipping bill alongwith supporting documents viz. by the (i) Original Export Invoice dated 24.8.2018, (ii) copy of check list of shipping bill dated 24.8.2018 and (iii) Original House Air Way Bill No. 26118875 and the same was allowed by the Adjudicating Authority vide Order-in-Original dated 20.11.2018 as section 149, Customs Act, 1962 permits such amendment subject to the discretion of the proper officer and a penalty of Rs. 5,000/- was imposed on the appellant u/s. 117 ibid as the exporter i.e. the appellant failed to make a true and correct declaration while filing the shipping bill. Aggrieved, the Revenue filed appeal before the Commissioner (Appeals) who, vide impugned order dated 31.10.2019 allowed the appeal filed by revenue by holding that since the appellant was not the actual exporter, the provisions of section 149 ibid have no application.

3. I have heard learned counsel for the appellant and learned Authorised Representative for the revenue and perused the case records including the synopsis placed on record by the learned Authorised Representative. The provisions of Section 149 *ibid* are reproduced hereunder for the purpose of ready reference:-

SECTION 149. Amendment of documents. - *Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended:*

Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.

A perusal of the aforesaid would make it clear that if the request of amendment is on the basis of the documentary evidence, which was in existence at the time the goods were exported then the amendment can be allowed by the proper officer. So the discretion has been left with the proper officer but the pre-condition is that it should be on the basis of documentary evidence existing at the time when the goods were exported. In the instant case although the export has been made by the appellant but inadvertently the name of M/s. Dinal Diamonds was mentioned and when the mistake has been realized, the exporter/CHA immediately took step and filed the amendment application alongwith the supporting documentary evidence existing at the of export viz. Export Invoice No. 43/2018-19 dated 24.8.2018 and the Airway Bill dated 24.8.2018 and all

these documents contain the name of the appellant only and there is no mention of M/s. Dinal Diamond in those documents. The shipping bill which inadvertently contained the name of Dinal Diamonds has been prepared on the basis of airway bill and the invoice dated 24.8.2018 which strengthen the claim of the appellant that they are the actual exporter and have been rightly granted amendment by the adjudicating authority u/s. 149 ibid. The invoice also contains IEC Code and GST of appellant only. In view of the above, the observation of the learned Commissioner that the appellants are not the actual exporter and hence section 149 ibid has no application is without any basis.

4. Therefore the impugned order is set aside and the appeal filed by the appellant is allowed.

(Pronounced in open Court on 19.06.2023)

(Ajay Sharma)
Member (Judicial)

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