CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH- COURT NO. 1

CUSTOMS APPEAL NO: 87135 OF 2022

[Arising out of Order-in-Appeal No: MUM-CUSTM-APSC-APP-600 to 602/2022-23 dated 7th July 2022 passed by the Commissioner of Customs (Appeals), Mumbai Zone – III.]

Hemal K Mehta & Co.
Bharat Diamond Bourse,
Bandra Kurla Complex, Bandra (East), Mumbai-400051 … ***Appellant***

versus

Commissioner of Customs
Avass corporate Point Marol,
Naka Andheri-Kurla Road, Andheri €, Mumbai-400059 ***…Respondent***

APPEARANCE:

Shri H G Dharmadhikari, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 85451 /2024

DATE OF HEARING: 19/04/2024
DATE OF DECISION: 19/04/2024

According to Learned Counsel for appellant, M/s Hemal K Mehta & Co., their challenge to order[1] of Commissioner of Customs (Appeals), Mumbai-III, which upheld the confiscation of goods under

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[1] [order-in-appeal No. MUM-CUSTM-APSC-APP-600 to 602/2022-23 dated 7th July 2022]

section 111 and section 118 of Customs Act, 1962 and imposition of penalty under section 112 of Customs Act, 1962 by the lower authority, is founded on discarding of the purported lack of consideration of the reconciliation statement which, though not made available at the time of adjudication, was before the first appellate authority.

2. Setting out the background, Learned Counsel submitted that 21 pieces out of 51 pieces of 'cut and polished diamonds', shipped to Belgium, against invoice no. 025/2019-20 dated 18th January 2020 and corresponding shipping bill no. 9739745/18.01.2020, had to be re-imported owing to commercial exigency and their claim of entitlement for 'duty free' import, against notification no. 45/2017-Cus dated 30th June 2017 (serial no. 5), had been denied on the ground that the dimensions of one of the stones did not match the declaration included at the time of export and that the packing list corresponding to the bill of entry no. 7025578/ 26.02.2020 did not conform to that attached with relevant shipping bill *supra*.

3. Learned Counsel submits that they were not, then, in a position to submit all the details for reconciliation for scrutiny by the adjudicating authority but that they are ready to do so now.

4. We have heard Learned Authorized Representative.

5. Considering the relevance of plea made on the behalf of the appellant, this appeal is allowed by setting aside the impugned order and remanding the dispute back to the original authority for determination of the issue afresh. Accordingly, the appeal is disposed off.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*