CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Miscellaneous Application No. 85999 of 2022
Customs Cross Application No. 85994 of 2022

In

Customs Appeal No. 86828 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-APSC-APP-344 to 347/2022-23 dated 26.05.2022 passed by Principal of Commissioner of Customs (Appeals), Mumbai Customs Zone-III)

Commissioner of Customs-Air Special Cargo **.....Appellant**
6th Floor, Awas Corporate Point, Makwana Lane, Andheri-Kurla Road, Behind S.M. Centre, Andheri (E), Air Cargo Complex, Sahar, Mumbai-400059.

VERSUS

M/s K. Chandrakant & Co. International Pvt. Ltd. **.....Respondent**
AE-6011, 6th Floor, Bharat Diamond Bourse, Bandra-Kurla Complex, Bandra (E), Mumbai-400051.

Appearance:

Shri D. S. Mann, Authorized Representative for the Appellant
Shri Sanskar Nagar a/w Shri Rajendra Nagar, Advocates for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87479/2023

Date of Hearing: 02.11.2022
Date of Decision: 01.05.2023

PER : S. K. MOHANTY

This appeal of Revenue is directed against the Order-in-Appeal No. MUM-CUSTM-APSC-APP-344 to 347/2022-23 dated 26.05.2022 (for short, referred to as 'the impugned order') passed by the learned Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai. The said impugned order was passed in disposing of the common original order dated 22.11.2021 passed by the Joint Commissioner of Customs, APSC, Mumbai in respect of the assessees viz., M/s K. Chandrakant & Co. International Pvt. Ltd., Mumbai, its Director, Accountant and Customs Broker.

2. Learned Commissioner of Customs (Appeals) in the impugned order has upheld the order of Original authority for rejection of transaction value of the export goods declared by assessee as US$ 3,54,018.53, and for re-determination of the value of export goods as US$ 1,77,009.26 along with its confiscation only under Section 113(i) of the Customs Act, 1962, as against O-in-O confiscating the goods under 113(d) and 113(i) ibid. However, he has allowed the same for redemption on payment of fine of Rs.20,00,000/- under Section 125 ibid. Further, he has reduced the penalty imposed by the original authority on various persons as follows: (a) M/s K. Chandrakant & Co. International Pvt. Ltd., from Rs.50,00,000 under Section 114(i) to Rs.5,00,000 under Section 114(iii) ibid; (b) Shri Vipul K. Shah, Director of the assessee from Rs.15,00,000/- each under Section 114(i) and 114AA ibid to Rs. 5,00,000/- each; (c) Shri Manoj Yadav, Accountant of the assessee from Rs.5,00,000/- under Section 114(i) ibid to Rs.1,00,000/- and (d) dropped the penalty imposed on the Customs Broker M/s Chinai & Co. (I) Pvt. Ltd.

3.1. The Committee of Commissioners during their review was aggrieved against the decision of the said Commissioner of Customs (Appeal) and had filed this appeal through the Deputy Commissioner representing the Principal Commissioner of Customs-II, Airport Special Cargo Commissionerate, Mumbai before the Tribunal. The grounds of appeal *inter alia* are:-

> (i) the Order-in-Appeal passed by the Commissioner of Customs (Appeals), Mumbai Zone-III, is illegal and improper
>
> (ii) the Commissioner of Customs (Appeals) had erred in allowing the goods for redemption on payment of redemption fine of Rs.20,00,000/- as the goods are prohibited goods and fit for absolute confiscation
>
> (iii) the Commissioner of Customs (Appeals) had erred in reducing the penalties on respondent assessee and its Director, Accountant and in setting aside the penalty against Customs Broker.

3.2. Hence, the appellants had prayed for setting aside the redemption option given to the goods involved in impugned order, and for restoring penalties imposed in the Order-in-Original.

4. In the cross objection filed by the assessee, they submitted that the export of Rough Diamonds, whose declared value was questioned by the Department, is not 'prohibited goods' in terms of EXIM policy as per DGFT notification No.21/2002-07 dated 26.12.2002, as the only requirement for exporting Rough Diamonds to be accompanied by Kimberley Process (KP) Certificate, was duly fulfilled by them, which was submitted at the time of export. Further, relying on the decision of the Commissioner of Customs (Appeals) for allowing the goods on redemption fine on the basis of similar cases in the same jurisdiction, and on the basis of the fact that neither the import nor export of rough diamonds in the present case was from/ to suspect country, the assessee pleaded that impugned order is legal and proper; hence the same maybe accepted by the this Tribunal by rejecting the appeal filed by the Department.

5. The facts of the case in brief are as follows:

5.1 M/s K. Chandrakant & Co. International Pvt. Ltd., had filed the Shipping Bill No.3550179 dated 17.04.2019 before the Customs authorities for export of 16,675.39 carats of rough diamonds. They had declared the value of such export goods as US$ 3,54,018.53 in the export invoice No. KC/014/2019-2020 dated 16.04.2019, accompanied by KP Certificate No. IMHO-MUM/80019337 dated 17.04.2019 for supply to M/s Sunnex B.V.B.A., Office No.230, Hoveniers straat 2, P.O.Box 540, VAT 456455769, Antwerp/Antwerpen/ANR 2018. Belgium. The subject goods were examined on 100% basis by the Customs during the process of clearance/appraisement of the value of exports. On the valuation of export goods, an expert panel had observed that the export goods were overvalued almost double its original value and determined its actual value to be US $ 1,77,009.26. On further investigation by the Department, the export goods were seized under Section 110(1) of the Customs Act, 1962 on 22.01.2020. Further, show cause notice dated 23.06.2020 was issued, which was adjudicated by the Joint Commissioner of Customs, APSC, Mumbai Zone-III by absolutely confiscating the export goods, re-determining the export value and by imposition of penalties on the assessee and its director, accountant and its Customs Broker.

5.2. The assessee and its director, accountant, Customs Broker having been aggrieved by the said order had filed appeals before the Commissioner of Customs (Appeals), who had decided the issue in the impugned order as elaborated in para 2 above. The Department having been aggrieved against the said order passed by Commissioner of Customs (Appeals), have appealed against it before this Tribunal. Consequently, the assessee had also filed their cross objections to the appeal filed by the appellant Department.

6. Shri Sanskar Rajendra Nagar, Advocate for the Respondent assessee, submits that the export of rough diamonds is not prohibited as they have submitted KP certificate issued by Gem & Jewellery Export Promotion Council (GJEPC), and the review by Committee of Commissioners for filing appeal before this Tribunal, has been done in a mechanical manner without appreciating and examining the entire facts of the case. Hence, he claimed that absolute confiscation of export of rough diamonds is not legal and in support of the same, relies on the following judgements:

(i) *Shail Diamonds Pvt. Limited Vs. Commissioner of Customs, Ahmedabad 2010 (250) ELT 0310 (Tri.- Ahmd.),*

This case has been affirmed in the Hon'ble Supreme Court in the case of *Commissioner Vs. Shail Diamonds Pvt. Limited 2010 (257) ELT (A22) SC*

(ii) *Sagar Impex Vs. Commissioner of Customs, Airport, Mumbai. 2017 (358) ELT 504 (Tri. – Mumbai)*

(iii) *Surat Rough Diamond Sourcing India Ltd. Vs. Commissioner of Customs, Ahmedabad in Customs Appeal No.11784, 11785 and 11803 of 2017 dated 12.03.2020*

(iv) *B.K.J. Overseas Vs. Commissioner of Customs, Jaipur 2016 (340) ELT 567 (Tri-Del.)*

7. Learned Authorised Representative appearing for the Revenue reiterated the grounds of appeal referring to the relevant findings in the Order-in-Original and supportive portion of the order of Commissioner (Appeals) and prayed that the appeal filed by the department for absolute confiscation and restoration of the penalties imposed in the Order of the Original Authority, be admitted/restored.

8. Heard both sides and perused the records of the case.

9. In order to appreciate the rival contentions of both the department and the assessee, it would be appropriate to refer the specific findings of the impugned order, wherein the Commissioner (Appeals) has come to the conclusion for rejecting the order passed by the Original authority for absolute confiscation of export goods:

> *"76. It has been observed by the adjudicating authority that the particulars of impugned goods under the shipping bill No.3550179 dated 17.04.2019 and particulars mentioned in the Kimberley Process (KP) Certificate No. HO-MUM/ 80019337 dated 17.04.2019 do not match in respect of value of goods. The value of goods mentioned in the KPC is US$ 3,54,018.53 whereas the redetermined value of the goods is US$ 1,77,009.26. Therefore, the adjudicating authority has reached to the conclusion that the KPC produced for the impugned goods does not correspond to the goods presented for export vide shipping bill No.3550179 dated 17.04.2019. in view of above, he has held that the goods under impugned shipping bill are prohibited goods and the goods are liable for confiscation under section 113(d) of the Customs Act, 1962. However, I have divergent view on the subject matter. In this regard, I quote the relevant portion of CBIC circular No.53/2003 dated 23.06.2003 which deals with the KPC.*
>
> > *'The international certification scheme for rough diamonds entitled 'Kimberley Process Certification Scheme' was adopted in a Ministerial meeting….. Further, it may also have additional details such as quality, characteristics of rough diamonds in the shipment etc.'*
>
> *From the above, it is apparent that the KPC scheme is basically meant for ensuring that the diamond under the import and export trade is not conflict diamond, whose trade is prohibited by the United Nations Security Council. For valuation, the department has never considered the value given in the KPC certificate as sacrosanct and therefore there is expert panel, advising on the valuation part. I feel that KPC can be denied if there are other collaborative evidences also present like absence of genuine invoice, difference in description, difference in HWB/ Airway Bill or any other confirmed result of investigation. Along with this, the facts of each case also have to be taken into account. Here in the present case, I find the appellant has quoted that the first*

expert panel member, Shri Mahesh Waghani, who had also examined their import consignment has said that both the goods are same; there is packing list available of the foreign supplier; Public Notice asking them to clarify all the four Cs (Cut, Colour, Clarity and Carat) in the invoice is dated after the consignment and previously there was no such enforcement therefore, appellants cannot be said to have violated the practice or expectations; there is letter of GJEPC dated 17.05.2019 and 29.05.2019; letter of Diamond Producer Association dt. 22.05.2019; and there are judgements of the Apex Court like Mahalaxmi Gems and Sahil Diamonds, which says that transactional value should not be denied in the absence of through investigation. I also note that neither import nor export was from/to suspect country and the appellant were also not figuring in the suspect list. The above facts go in favour of the appellant.

…..

77. I note that the appellant have raised an argument of arbitrariness and bias against the adjudicating authority/authorities because .in similar cases the option has been given to redeem the goods on RF. On checking this point, I am surprised to note that in past there have been many such cases wherein adjudicating different ADCs/JCs have been constantly taking view that whenever there is huge difference in value as compared to value mentioned in KPC and the expert opinion for the consignment is different, the goods will be confiscated but the option of Redemption Fine will be given as these are not prohibited goods. I also note that department has been accepting those orders. To list a few, I will quote:

A. Order No. ADC/PK/40/2020-21/APSC

B. Order No. JC/JSU/15/2021-22/ADJN-APSC

C. Order No. JC/VKP/57/2020-21/PCCCC

D. Order No. JS/JSP/20/2020-21/APSC.

78. The above shortlist suggest that under different regimes, the goods were being confiscated and were given the option of Redemption Fine. The Policy of allowing goods on payment of RF has been the same. In view of these observations, I am inclined to be judicious and balanced to all as far as absolute confiscation is concerned. I agree with appellant and I opine that the subject goods are liable for confiscation under section 113(i) rather than being liable for absolute confiscation under provisions of section 113(d), which reads as under:

> *'113. The following export goods shall be liable to confiscation:*

(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act...'

79. I also note that in the subject show cause notice penalty under section 114(i) and/or 114(iii) was proposed on M/s. K.Chandrakant & Co., Shri Vipul K.Shah, Shri Manoj R Yadav and B.V.Chinai & Co.(I) Pvt. Ltd. as discussed in the preceding paragraphs, the adjudicating authority has held that penalty under section 114(i) of the Customs Act, 1962 is applicable and penalty under section 114(iii) of the Customs Act is not applicable. In this regard, I find that section 114(i) is applicable in case of prohibition. Since I do not find it as a case of prohibition, I am of the view that penalty on them is rather applicable under section 114(iii) and not under section 114(i)….
Since I do not hold KPC produced by the exporter as invalid in the case, the goods would not fall under category of 'prohibited goods', hence, for penal action provisions of section 114(i) will not be attracted. Therefore I am of the view that the appellants should be penalized under section 114(iii) alone… The impugned order is modified to that extent."

On perusal of the aforesaid discussions in arriving at the conclusions by the Commissioner of Customs (Appeals) in the impugned order, we find that his order for allowing the goods on redemption fine after determination that these are not prohibited goods; and imposition of penalty under the referred legal provisions of the Customs Act are logical and is based on the facts of the case.

10.1. We find that the term "prohibited goods" has been defined under Section 2(33) of the Customs Act, 1962, which is reproduced as under:-

"2. In this Act, unless the context otherwise requires,-
…….
(33) 'prohibited goods' means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with; ".

A plain reading of the aforesaid provision makes it clear that to attract the said definition, there should be a prohibition prescribed under the law for its import or export, and such goods should have been involved in the import or export violation relating to such prohibition, to treat the same as prohibited.

10.2. We further find that confiscation has been authorised for export of goods under the various sub-sections of (a) to (l) of Section 113 of the Customs Act, 1962:-

> *"113. The following export goods shall be liable for confiscation:*
> *(a) any goods attempted to be exported by Sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;*
>
> *……*
>
> *(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
>
> *…..*
>
> *(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act in the case of baggage with the declaration made under section 77;….*

In the instant case, the provisions of either section 113 (d) or 113 (i) ibid, should have been first attracted to consider confiscation of the export goods and followed by its adjudication under Sections 122, 125 for deciding on absolute confiscation of the goods or for allowing the goods an option to pay fine in lieu of confiscation, commonly known in the trade parlance as Redemption Fine.

10.3. We also find from records of the case, that the export of rough diamonds is not prohibited in terms of the Customs Act, 1962 or by the EXIM Policy, except for the stipulation under DGFT notification No.21/2002-07 dated 26.12.2002, as follows:

> *"In exercise of powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.1 of the Export and Import Policy, 2002-07, the Central Government hereby amends the Export and Import Policy, 2002-07 as under:*
>
> *1. A sub-para is added at the end of paragraph 2.2 as under:-*

> *No import or export of rough diamonds shall be permitted, unless the shipment parcel is accompanied by Kimberley Process (KP) Certificate required under the procedure specified by the Gem and Jewellery Export Promotion Council (GJEPC).*
>
> *……"*

The facts on record in the present case, show that the assessee had filed the shipping bill No.3550179 dated 17.04.2019 along with Kimberley Process (KP) Certificate No. HO-MUM/ 80019337 dated 17.04.2019 for export of 16,675.39 carats of rough diamonds, with the total value declared as US$3,54,018.53 in the export invoice No.KC014/2019-2020 dated 16.04.2019. We also note that the said Kimberley Process (KP) Certificate was issued by the Gem and Jewellery Export Promotion Council, providing details of export goods as goods falling under HS Code 7102.21 for a quantity of 16,675.39 carats and the value as US$3,54,018.53. There was a doubt about the value of export goods in the opinion of the Department. Thus, the department had referred the issue of valuation of rough diamonds to an expert panel. The extract of the report/opinion given by the first expert and second panel of experts are quoted below:

> "Opinion of Expert Panel Member Shri Mahesh Vaghani – *I have examined RD (Rough Diamonds). All Lots. As per my best knowledge declared value is on higher side*"
>
> "Opinion of Committee of three Expert Panel Members S/Shri Sanjay Vaghani, Mansukhk Khunt and Shripal Kumar N Desai – *we have joined examined all the parcels and as per our best knowledge average price mentioned in invoice is approximately double in compare of goods. So, we make it as unfair*".

10.4. We fail to understand that when the Department expect the importers/ exporters to declare specific details about the rough diamonds, like size, shape, type, clarity etc. [as discussed in para 76 of impugned order], how the expert opinion for deciding on the value of rough diamonds, is done and is accepted by the Department without specifying the basis on which such value has been arrived at. We further find that the assessee had placed reliance on the correspondence of the department with GJEPC dated 17.05.2019, wherein GJEPC, *inter alia*, had stated to the Chief Commissioner of Customs that the manner in which rough diamonds are priced admits of wide variations even amongst the members of the Diamond trade. This is best exemplified by the fact that in an auction for a consignment of rough diamonds, experts from the same trade may quote prices which are divergent to the extent of 30% to 40%. Thus, we find that the issue of difference of opinion of the department and the assessee on the declared value of export goods, do not have any impact on prohibition and the export of rough diamonds in this case cannot be treated as prohibited goods. In any case, this issue was discussed by the learned Commissioner of Customs (Appeals) at para 76 of the impugned order in detail and he finds that the facts are in favour of the assessee. Thus, we concur on this point with the impugned order.

11.1. We also find that in a similar matter, in the case of *Sagar Impex Vs. Commissioner of Customs, Airport, Mumbai. 2017 (358) ELT 504 (Tri. – Mumbai)*, this Tribunal had found no grounds to sustain confiscation of rough diamonds whose value was questioned, even after imposition of redemption fine:

> "4. The adjudicating authority has enhanced the value to that recommended by 'trade panel' but he yet appears not be without doubts about this value for, in spite of allowing redemption of the confiscated diamonds on payment of fine of Rs.10,00,000, apprehension is entertained that valuable foreign exchange would still be lost. The inevitable conclusion is that the adjudicating authority was himself unsure of the value adopted.
>
> 5. It is admitted that there is no revenue involvement in the dispute and that no duties are liable to be collected on the declared or enhanced value. In these circumstances, the initiation of proceedings to reassess the value is, itself, questionable. The scheme of the Customs Act, 1962 envisages declarations as a pre-requisite for assessment and collection of duty. Value, and valuation provisions in the Act and Rules framed thereunder, are relevant and applicable solely for achievement of this end. The confiscation provisions do not admit to proceedings that are unrelated to the objective of the Customs Act, 1962. It is quite clear from the findings of the original authority that an enhancement of value by customs authorities in the shipping bill or bill of entry does not carry with it the concomitant obligation to repatriate or remit the differential value from, or to, the buyer, or supplier, respectively. In the circumstances, the disallowance of exports even after imposition of redemption fine is not justified by law. There is no ban on export of diamonds and no authority is vested in the Commissioner of Customs to disallow an export in the absence of a ban. The impugned order is vitiated by arbitrary and unauthorised exercise of power.

6. We do not find any justifiable reason for the adjudicating authority to accept the value recommended by 'trade panel' and there is also no finding to sustain the invoking of Section 113(i) of Customs Act, 1962 viz.

'Section 113. Confiscation of goods attempted to be improperly exported, etc. - The following export goods shall be liable to confiscation:-
xxxxx
(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77.'

7. In view of the above, we find no grounds to sustain the impugned order. Consequently, it is set aside and the appeal is allowed."

11.2. We also find that in another matter involving confiscation of rough diamonds, in the case of *Shail Diamonds Pvt. Limited Vs. Commissioner of Customs, Ahmedabad 2010 (250) ELT 0310 (Tri.- Ahmd.),* this Tribunal found that absolute confiscation of rough diamonds was not warranted in the light of the fact that the KP certificate produced by the appellant was valid:

"24. For ordering absolute confiscation of the goods, the Commissioner (Appeals) has relied upon the Para 7 of the said Circular which refers to the importation of the rough diamonds through personal baggage under various export promotion schemes and prescribed that if the rough diamonds becomes liable to confiscation under Section 111 of the Customs Act for any contravention, the goods should be absolutely confiscated by the Customs. On going through the Para 7 of the said Circular, we find that the same does not relate to non-production of K.P. certificate, but is in respect of other contravention. The relevant para, which deals with the production of K.P. certificate in Para 6 of the said Circular which is reproduced below for better appreciation.

"6. In case a rough diamond consignment is not accompanied by a KP Certificate) but otherwise in order, the importer in India may be given seven working days to arrange for the original KP Certificate for clearance of the' said import consignment. If the importer is not able to submit the Original KP Certificate within the said period of seven working days, the goods would be sent back to the Exporting Authority (i.e. the certifying authority) of the country of origin. All formalities in this regard would be completed by the GJEPC and cost of such shipment would also be borne by the GJEPC."

25**.** As is seen from the above, if the importer is not able to submit the K.P. certificate, the goods would be sent back. As such, the

Board itself prescribed re-export of the goods in the absence of any K.P. certificate, in which case, the absolute confiscation of the rough diamonds by the Commissioner on the ground of non-production of valid K.P. certificate cannot be upheld. Apart from the above and in any case, we find that the K.P. certificate stand produced by the appellant covering the rough diamonds to the extent of value declared by them and having held that the declared value was correct, the K.P. certificate have to be held valid. Consequently, no contravention can be said to have been committed by the exporter, calling for any confiscation of the diamonds in question."

11.3. We further find that CBIC have been issuing specific instructions from time to time on seizure of export goods, directing the field formations that seizure of export goods shall be resorted to only in case of prohibited goods, so that genuine exports do not suffer from undue delay and hardship caused due to investigation initiated by the department. The extract of CBIC Circular No.30/2013-Customs dated 05.08.2013 is as below:

"Circular No. 30/2013-Cus.

F. No. 401/179/2009-Cus.III
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi
Dated 5-8-2013

Subject: Provisional release of export - goods detained for investigation - Regarding.

Attention is invited to the Board Circular No. 1/2011-Customs, dated 4-1-2011 regarding provisional release of export goods that are detained or seized. The said Circular was issued with the objective of expediting the clearance of export goods and to ensure that where permissible by law, exports should not get unduly delayed, thereby causing congestion in ports as well as delays in fulfilment of export orders. Thus, it was instructed that provisional release of export goods that are suspected of being misdeclared or where declaration is to be confirmed by further enquiry/test or detained/seized for misdeclaration of quantity/value/ description should be given on execution of Bond and suitable security to cover the redemption fine and penalty (Para 4 of Board Circular No. 1/2011-Customs, dated 4-1-2011). Further, continued detention of export goods in excess of three days must be brought to the notice of the Commissioner of Customs.

2. It has been brought to the notice of the Board that the above instructions are not being implemented by certain field formations and exporting community is aggrieved by the long detention of exports goods. The matter has been raised in many forums and

> *the issue of congestion in ports has also been highlighted by Inter-Ministerial Committee for boosting exports from Micro, Small & Medium Enterprises (MSMEs) sector, which pointed out that, besides the Boards aforementioned instructions, paragraph 2.42 of the Foreign Trade Policy also provides that export consignments shall not be withheld/delayed for any reason.*
>
> *3. The Board has re-examined the subject matter. The view is that there can be no justification to hold up export consignments for long periods unless the export goods are prohibited under Customs Act, 1962 or ITC (HS) Policy. Essentially genuine exports must be facilitated and there should be no delays or hold ups of export goods. Therefore, the Board strongly reiterates the instruction dated 4-1-2011 referred above. It shall be the responsibility of Commissioner of Customs concerned to ensure strict compliance of these instructions. Needless to state any deviation or lapse shall be proceeded against by the Board.*
>
> *4. A suitable Public Notice for information of trade and Standing Order for guidance of staff may be issued."*

12. In view of the above, and considering the definition of 'prohibited goods' not being attracted in the instant case of export of goods; and upon fulfilment of the sole condition for production of Kimberley Process (KP) Certificate at the time of export having been fulfilled by the assessee, we find that the export of rough diamonds in this case cannot be covered under the scope of 'prohibited goods'. We also note that the Commissioner of Customs (Appeals) had also arrived at this conclusion after examining the facts of the case at great length, as explained in the para 9 above. It is not the case of Department that there was any violation involving revenue implication in the instant case. In the revised scenario, the penalties imposed by the Commissioner of Customs (Appeals) in the impugned order justifying penal action only for the violations discussed therein, on the assessee, its Director, its Accountant and absolving the Customs Broker from penalty do not require any intervention by us. Consequent to the above conclusion, we find that during the adjudication process, the adjudicating authority is bound to give the option of paying fine in lieu of confiscation/ redemption fine under section 125 (1) of the Customs Act, 1962.

13. In view of the discussions and findings recorded in the preceding paragraphs, we are of the considered view that the impugned order of

Commissioner (Appeals) does not require any interference and therefore, the appeals filed by the department is deserves to be dismissed.

14. In view of the above, we order that the Appeal filed by the department, seeking absolute confiscation of export goods along with enhancement of penalties does not survive. Hence, the appeal filed by the department is dismissed. The cross objection filed by the respondent assessee stands disposed of. Misc. application also stands disposed of.

(Order pronounced in the open court on 01.05.2023)

(C J Mathew)
Member (Technical)

(S. K. Mohanty)
Member(Judicial)

Sm