CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 04

Customs Appeal No. 85276 of 2024

(Arising out of Order-in-Original No. MUM/CUS/HD/07/2023-24/ADJN/APSC dated 31.10.2023 passed by the Commissioner of Customs, Airport Special Cargo, Adjudication Cell, Mumbai)

Happy Gems **Appellant**
DC-5110 Bharat Diamond Bourse,
G-Block, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

Vs.

Commissioner of Customs, Air Special Cargo Mumbai-II **Respondent**
6th Floor, Avas Corporate Point,
Marol, Andheri (E), Mumbai 400 059.

WITH

Customs Appeal No. 85277 of 2024

(Arising out of Order-in-Original No. MUM/CUS/HD/07/2023-24/ADJN/APSC dated 31.10.2023 passed by the Commissioner of Customs, Airport Special Cargo, Adjudication Cell, Mumbai)

B.K. Freight Forwarders P. Ltd. **Appellant**
JE 01 J Tower, Bharat Diamond Bourse,
Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

Vs.

Commissioner of Customs, Air Special Cargo Mumbai-II **Respondent**
6th Floor, Avas Corporate Point,
Marol, Andheri (E), Mumbai 400 059.

<u>Appearance:</u>

Shri Chirag Shetty, Advocate, for the Appellant
Shri Deepak Sharma, Assistant Commissioner, Authorised Representative for Respondent

<u>CORAM:</u>

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

Date of Hearing: 06.01.2025
Date of Decision: 06.01.2025

FINAL ORDER NO. 85011-85012/2025

Above stated two appeals are taken together for hearing and decision.

2. Appellant challenged the impugned order-in-original dated 03.10.2023 passed by Commissioner of Customs, Airport Special Cargo, Air Cargo Complex, Mumbai through which the learned original authority confiscated the goods which were presented for export having total declared FOB value of Rs.69,24,038/-, and imposed redemption fine of Rs.7,00,000/- and imposed various penalties.

3. Brief facts of the case are that the appellant presented the goods for export. The goods were detained under suspicion on 24.01.2023. From 24.01.2023 till 29.05.2023 no action was taken by Revenue. On 29.05.2023 the goods which were presented for export through Shipping Bill No. 6373800 dated 23.12.2022 which were detained on 24.01.2023 were examined in presence of independent panchas and it was found that it tallied with the declared description, caratage and value. Still they were seized and show cause notice dated 27.06.2023 was issued calling upon the appellant to show cause as to why goods should not be confiscated under Section 113 of Customs Act, 1962 and why penalty should not be imposed. On contest, the impugned order-in-original was passed.

4. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that Customs have entertained a suspicion that the package which was presented for export under cover of Shipping Bill No. 6373800 dated 23.12.2022 was empty. Therefore the same was detained on 24.01.2023 and detailed examination was conducted before independent panchas on 29.05.2023 and as stated in para 4 of the show cause notice dated 27.06.2023, the package was found to contain the goods which were declared through the said shipping bill and the goods tallied with the description, caratage and value declared in the said shipping bill. He has submitted that there was no case for confiscation of the said goods nor there was a case for imposition of penalty.

5. Learned AR has submitted a copy of letter dated 03.12.2024 issued by Assistant Commissioner of Customs, Legal Cell, Airport Special Cargo Commissionerate, Mumbai wherein some information is given.

6. The information which was called through daily order sheet 19.11.2024 was the details of the sequence of events between 23.12.2022 and 29.05.2023. The information is at serial No.5 of the said letter stating that a statement of director of the appellant was recorded on 30.12.2022, custodian on 05.01.2023 and exporter on 24.01.2023. The said letter does not explain why Customs took more than four months after detention of goods on 24.01.2023 till 29.05.2023 for detailed examination of the goods and seizure of the same on 29.05.2023.

7. I have carefully gone through the record of the case and submissions made. I note that Customs did not take any action on the detained goods from 24.01.2023 till 29.05.2023. Further on 29.05.2023, on detailed examination, the package was found to contain the goods declared through the said shipping bill and the goods in the package tallied with the declaration in the shipping bill in respect of description, caratage and value. Therefore there was no case for seizure of the said goods. Since there was no case for seizure of the goods, the adjudication and confiscation of the same does not arise.

8. I, therefore, set aside the impugned order and direct the respondent Commissioner to release the goods within two weeks from today, and immediately upon presentation of copy of this final order by the appellant.

9. Appeal No. C/85276/2024 filed by M/s. Happy Gems is allowed in above terms.

10. The other appeal bearing No. C/85277/2024 is filed by the Customs Broker associated with the export. Since no contravention was established in respect of the above said goods, the appeal filed by the Customs Broker bearing appeal No. C/85277/2024 is also allowed.

(Order pronounced in the open court)

(Anil G. Shakkarwar)
Member (Technical)

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