

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

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 85746 of 2022

(Arising out of Order-in-Original No. MUM/CUS/VKC/03/2021/ADJN/APSC dated 15.12.2021 passed by the Pr. Commissioner of Customs-II, Airport Special Cargo, Mumbai.)

M/s. S. Kantilal & Company
503, Dharam Palace, B Wing,
Sukh Sagar, Mumbai-400 007

.....Appellant

VERSUS

Commissioner of Customs –
Airport Special Cargo, Mumbai
6th Floor, Awas Corporate Point,
Makwana Lane, Andheri-Kurla Road,
Behind S.M. Centre, Andheri (East),
Air Cargo Complex, Sahar, Mumbai – 400 059

.....Respondent

WITH

Customs Appeal No. 85747 of 2022

(Arising out of Order-in-Original No. MUM/CUS/VKC/03/2021/ADJN/APSC dated 15.12.2021 passed by the Pr. Commissioner of Customs-II, Airport Special Cargo, Mumbai.)

Mr. Sanjay K. Shah
Partner of M/s. S. Kantilal & Company,
503, Dharam Palace, B Wing,
Sukh Sagar, Mumbai-400 007

.....Appellant

VERSUS

Commissioner of Customs –
Airport Special Cargo, Mumbai
6th Floor, Awas Corporate Point,
Makwana Lane, Andheri-Kurla Road,
Behind S.M. Centre, Andheri (East),
Air Cargo Complex, Sahar, Mumbai – 400 059

.....Respondent

APPEARANCE:

Shri J.C. Patel, Advocate for the Appellants
Shri Dinesh Nanal, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 86314-86315/2025

Date of Hearing: 04.07.2025

Date of Decision: 03.09.2025

In this second round of litigation learned Principal Commissioner vide his above referred order has confirmed the redemption fine of ₹12,50,000/- under Section 25(1) of the Customs Act alongwith penalty of ₹5,00,000/- on Appellant firm under Section 112(a) in Appeal No. C/85746/2022 and ₹2,00,000/- on its partner Sanjay K. Shah also under Section 112(a) of the Customs Act 1962, assailing which amount as in excess of statutory provision, Appellant is before this forum.

2. Fact of the case, in a nut shell, is that Appellant partnership firm, was engaged in business of cutting and polishing rough diamonds and retailing the polished diamonds, had placed order in January, 2015 for purchase and import of "Rough Diamonds" from Dubai from one proprietorship firm M/s. XPAN Diamonds, whose proprietor Mr. Anju Shah is his distance relation. On examination of goods by Customs after Appellant filed Bill of Entry on dated 24.01.2015, goods were found to be 'Natural Topaz' valued at ₹8,291/- and confirmed through examination also conducted by the Gemmological Institute of India in February, 2015 whereas Appellant had declared its value as ₹1,24,60,000/- in its Bill of Entry. Detail investigation was carried out and on the allegation of mis-declaration, show-cause notice was issued with proposal for confiscation of goods with fine and penalty as noted above, that got confirmed through adjudication order passed by Commissioner, that was earlier assailed before this Tribunal and was disposed of on 28.02.2019 *vide* order No. A/85422-85423/2019 with

a direction for remand. In the remand proceeding also Appellant met the same consequence as before and ultimately approached this Tribunal again for necessary relief.

3. During course of argument, both sides have argued for and against the merit of case as well as the legality of order passed by the Commissioner in imposing a much higher value as redemption fine and penalty. Learned Counsel for the Appellant argued with reference to proviso to Section 125 to say that redemption fine can't exceed market price, less duty and for both rough diamonds as well as Topaz Stone, since no duty is payable, market price of the goods should be ₹8,291/-, as determine by the Respondent plus some profit @10% and therefore, redemption fine should remain confined to ₹9,000/- at the maximum and likewise penalty under Section 112(a) should not be more than the value of goods which is ₹8,291/- only, apart from the fact that such fine is not imposable against the partnership firm as well as against one of its partners. Further, with reference to decision in *Suraj Diamonds (India) Limited Vs. Commissioner of Customs (Airport), Mumbai* as reported in 2008 (227) ELT 471 (Tri.-Mumbai) and decision in *Guru Ispat Ltd. Vs. Commissioner of Customs (Port), Calcutta* reported in 2003 (151) ELT 384 (Tri.-Kolkata), he also argued that when importer is not aware of the goods being changed against worthless products and when no *mala fide* intention on the part of Appellant is noticeable, no redemption fine and penalty could be imposable. With reference to decision of Hon'ble Bombay High Court passed in the case of *Royal Synthetics, Ajay Shah Vs. CCE, Mumbai-I* reported in 2018 (11) TMI 491 – CESTAT MUMBAI, he further argued that separate penalties on the firm and its partner can't be imposed, for which order passed by the Pr. Commissioner is required to be set aside.

4. In response to such submission, learned Authorised Representative Mr. Dinesh Nanal has argued in favour of the reasoning and rationality of the order passed by the Principal Commissioner and

had drawn attention of this Bench to the findings of Pr. Commissioner that nexus between importer and exporter being established as related parties, the entire transaction was designed to launder away US \$2,00,000 as purchased price of worthless Natural Topaz stone in place of rough diamonds, for which order passed by the Pr. Commissioner need not be interfered with. He further submitted that learned Pr. Commissioner also had justified imposition of penalty on both the firm and its partner in following judicial precedent set by Hon'ble Bombay High Court in the case of *M/s. Amritlakshmi Machine Works Vs. Commissioner of Customs (Import), Mumbai, reported in 2016 (335) ELT 225 (Bom.)*.

5. Contradicting such submission learned Counsel for the Appellant Mr. J.C. Patel submitted that case record would reveal that no payment was made by it in remitting Foreign Exchange after Appellant came to know from the examination made by the Respondent that supplier had shipped low value rough Natural Topaz and therefore, it had sought for its re-export. He further submitted that concerning imposition of penalty on both firm and its partner, he has submitted judgement that was passed by this Tribunal in *Royal Synthetics, Ajay Shah*, which followed Larger Bench's decision of the Hon'ble Bombay High Court in *M/s. Amritlakshmi Machine Works* case that would have precedent value over its earlier decision.

6. I have gone through the case record, submission made by the parties and also the relied upon decisions. At the outset, it is to be noted that in its earlier order dated 28.02.2019, this Tribunal had noted the submission of Appellant that it is not contesting duty or the value of goods but it is contesting only redemption fine and penalty. It would be worthwhile to reproduce para 3 of the said order that notes the submission made by both the parties. It reads:

"3. Today, during the course of hearing, learned Counsel for the Appellant submitted that the learned Commissioner has ordered for confiscation

of the goods under Section 111(m) of the Customs Act, 1962 with an option to redeem the same on payment of fine of ₹12,50,000/- under Section 125 ibid. She further submitted that as per the Government approved valuer the value of the goods in question i.e. rough diamond is only ₹8,291/- and reasonable profit margin of 10% into this assessable value cannot make the market value of the goods more than ₹15,000/-. Therefore, according to her, imposition of redemption fine of ₹12,50,000/- in respect of goods worth ₹15,000/- is not sustainable. She also admitted that the aforesaid contention was not raised by the Appellants before the learned Commissioner because they were not expecting such a huge redemption fine. She further submitted that the learned Commissioner has also erred in imposing penalty both on the partners as well as on the firm and the same is not sustainable. The aforesaid submission was also not raised by the Appellant before the learned Commissioner. The learned Authorised Representative on the other hand reiterated the findings recorded in the impugned order and submitted that since the Appellant have not raised the aforesaid submissions before the Commissioner, they are not entitled for the same at this stage. He prayed for dismissal of appeal filed by the Appellant. The learned Counsel admitted the mistake committed by the Appellant and submitted that one more opportunity may be given so that the Appellant can make these submissions before the authorities below.”

With above notings, this Tribunal had remanded the matter back to the Appellate Authority for re-hearing as those submissions were not placed before him on the earlier occasion. Therefore, this appeal is to be kept restricted on discussion on the merit of the quantum of redemption fine and penalty and imposition of penalty on both firm and its partner. Needless to say that importer and exporter are related parties and the amount shown as transaction value is unbelievably high and therefore, knowledge of the importer as being party to such transaction can't just be ruled out. However, Section 125 second proviso has clearly provided further that such fine shall not exceed the

market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. The market price of the goods was determined by the Department as ₹8,291/- and therefore, such fine should not be more than this value, for which the observation of Pr. Commissioner in his order that unless quantum of fine is levied on the declared value, Appellant would not get punished adequately for being an economic offender, is unsustainable.

7. In respect of penalty of ₹5,00,000/- and ₹2,00,000/- both on the Appellant firm and its partner, there is a clear findings of learned Pr. Commissioner that both firm and partner had conspired and attempted to defraud the exchequer with wrongful remittance of ₹2,00,000/- that could have impacted our national economy, for which proposal for higher penalty of ₹5,00,000/- and ₹2,00,000/- respectively were confirmed. His observation would have got approval of this Tribunal, had there been a remittance of the said amount that would have constituted commission of an offence for which imposition of appropriate penalty is justified but what is observed by learned Pr. Commissioner is that there was attempt made for causing loss to the national economy when in actuality, no such loss had actually taken place apart from the fact that it is not within the domain of the Assessing Officer to proceed in case of economic offences committed against the contrary, for which separate wings are already in place. Therefore, imposition of such higher amount as penalty is not at all justified, which is also required to be restricted to the value of goods namely i.e. ₹8291/- at the maximum.

8. Now the question arises as to on whom such penalty is to be imposed? Though contradictory decisions are cited by the adversaries on this issue, it would go without saying that no such provision to impose simultaneous penalty is available in Customs Act and bringing Section 135(i)(a) of the Customs Act, that is meant for criminal prosecution, in an adjudication proceeding under Section 112(a) of the Act, the Pr. Commissioner in his order can't be said to have sanctioned

of the law to impose double penalty. Admittedly, under the Partnership Act, for each act of the firm, each of the partners are supposed to be made liable as it the act has been committed by each of them but there is no justification to penalise one of the partners for the Act of the firm only because he is a relation of the exporter and had apparently dealt with the matter. Hence the order.

THE ORDER

9. The appeals are allowed in part and the order passed by the Pr. Commissioner of Customs-II, Airport Special Cargo, Mumbai is modified in restricting the penalty to ₹8,291/- on the Appellant firm under Section 125 of Customs Act, 1962 alongwith a fine of ₹8,291/- under Section 112(a) of the Customs Act to be paid by it to the Respondent-Department within two months of receipt of this order. Appellant Sanjay K. Saha is absolved of its liability, that is fastened on the Appellant partnership firm.

(Order pronounced in the open court on 03.09.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad