CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85143 OF 2024

[Arising out of Order-in-Appeal No: MUM-CUSTM-APSC-APP-871 to 874/2021-22 dated 29th October 2021 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Narendra Kumar Bhatewara
120, Prasad Chambers, Opera House, Mumbai - 400004 … ***Appellant***

versus

Commissioner of Customs (APSC)
6th Floor, Awas Corporate Point, Makhwana Lane,
Off: Andheri-Kurla Road, Marol, Andheri East,
Mumbai – 400059 ***…Respondent***

APPEARANCE:

Shri Sanjay Singhal, Advocate for the appellant

Shri Deepak Sharma, Deputy Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: _86777/2025

DATE OF HEARING: 18/09/2025
DATE OF DECISION: 18/09/2025

PER: C J MATHEW

This appeal of Shri Narendra Kumar Bhatewara lies against order[1] of Commissioner of Customs (Appeals), Mumbai–III wherein the appeal filed at the instance of jurisdictional Commissioner and by M/s Jalak Exports, as well as of two individuals, arising from confiscation of 27,455.93 carats of rough diamonds, declared to be valued at US$ 496859.46 but re-determined to be valued at US$ 476830.66, but permitted to be redeemed on payment of fine and penalties imposed on the importer and the two individuals, of whom Shri Narendra Kumar Bhatewara is now before us.

2. Learned Counsel for the appellant submitted that the resolution of issue in relation to the facts of the case *vis-à-vis* appellants, other than the appellant herein, was rendered in final order[2] disposing off appeal arising out of the very same order.

3. We have heard Learned Authorized Representative.

4. It is seen that the issue of confiscation of goods and penalties imposed had been considered by the Tribunal in *re Jalak Exports* thus

> *'6. There is no doubt that the Kimberley Process Certificate (KPC), submitted for the entire consignment, did refer only to one of the invoices; however it did match the total weight of the two lots. The limited remit of the said certificate is to suppress trade in 'conflict diamonds' and, indeed, notwithstanding its utility for that purpose, deprivation of title to such goods does not appear to be*

[1] [order-in-appeal no. MUM-CUSTM-APSC-APP-871 to 874/2021-22 dated 29th October 2021]
[2] [no. 86679-86680 dated 5th November 2021]

contemplated by law. We also find it ironic that goods which, most certainly, should end up ceasing existence, is, by the impugned order, regularised as property of the Central Government through an appellate process and, if the confiscation does sustain, condoned despite that imperfection. We are unable to fathom the cause for such appropriation or even a proposal for securing that end. The Customs Act, 1962 does not prescribe destruction of confiscated goods which is an executive decision and confiscation does not, of itself, assure destruction. There is, thus, every possibility of 'conflict diamonds' ending up in the domestic market which is, doubtlessly, not contrary to law but that they these were transported across the border and hence carrying the taint of 'conflict diamonds' in which the Central Government would be forced as an accessory by committee constituted under section 129D of Customs Act, 1962 does not appear to have weighed with the reviewing authority. It would have been most appropriate for the goods to be repatriated to country of despatch and to be dealt with in the manner appropriate to the laws of that country than that national commitment to ban on international trade in 'conflict diamonds' be called into question by consequence of absolute confiscation.

7. In any case, the lack of match in the certificate is not a ground for absolute confiscation of the impugned goods. It would have been appropriate for checks to be carried out with the authority concerned instead of adopting such precipitate action. The absolute confiscation is, therefore, set aside.

8. The original authority had confiscated the goods under section 111(m) of Customs Act, 1962 which comes into play for misdeclaration of particulars in the bill of entry. Valuation of imported goods, in accordance with section 14 *of Customs Act, 1962 and with rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is, doubtlessly, an approximation of its worth but is sanctified when determined in compliance of the statutory procedure; it is only upon the appropriateness of the method adopted or preceding procedure that re-determination may be challenged. The importer had foregone the opportunity to be placed on notice before substitution of the value and, hence cannot cry foul upon finding rendered. At best, only the computation becomes challengeable. There is nothing on record to indicate such challenge. The adoption of appraised value, while relevant for invoking rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, for assessment is inappropriate as*

> *'(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.'*

in Explanation below rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 does not tolerate such substitution.

9. In order that the consequence of misdeclared value is fairly, and only if due, visited on imports and importer as well as others, we set aside the impugned order for re-determination of value only to the extent permitted by rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The goods are not liable to be confiscated absolutely and even such confiscation, as is intended to be undertaken and subject to redemption on payment of fine, should limit itself to that portion of the goods *that were misdeclared with the rest of the goods eligible for clearance for home consumption.'*

5. Accordingly, this appeal too is disposed off by way of remand on identical lines.

(operative part of the order pronounced in the open court on 18th September 2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*