

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. IV

Customs Appeal No. 54958 of 2023

(Arising out of Order-in-Appeal No. 12-RLM-CUS-JPR-2023 dated 19.04.2023 passed by the Commissioner (Appeals), Jaipur)

M/s Mahakaal Jewels Private Limited
T-3, S S Tower, Dhamani Street,
Choura Rasta, Jaipur-302003.
(Rajasthan)

Appellant

VERSUS

**The Commissioner of Customs (Prev.)
Jaipur**

Respondent

Customs Commissionerate,
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302005 (Rajasthan)

APPEARANCE:

Shri Arun Goyal, Advocate for the Appellant

Shri Girijesh Kumar, Authorized Representative for the Respondent

CORAM :

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

Date of Hearing: 09.08.2023

Date of Decision: 09.10.2023

FINAL ORDER NO. 51405/2023

HEMAMBIKA R. PRIYA

The present appeal has been filed against the Order in Appeal No. 12-RLM-Cus-Jpr-2023 dated 19.04.2023, by M/s Mahakaal Jewels Pvt. Ltd. Jaipur (hereinafter referred to as the appellant) wherein the customs duty of Rs.64,866/-, fine of Rs. 54 lakhs and Rs. 2 lakhs along with penalty was imposed on the appellant. The brief facts of the case are the appellant filed a Bill of Entry No. 686

9180 dated 28.12.2021, for clearance of 14474.45 carat 'Emerald Rough Stone' falling under CTH71031031. The consignment was examined by the customs officer, in the presence of the authorized customs broker. During the course of examination, nine packets of Emerald Rough Stone, as declared in Bill of Entry was found and three small packets of undeclared goods which appeared to be white/blue colour rough stone weighing 271.75 carats were also found. Thereafter, the Gems and Jewellery Export Promotion Council, Jaipur vide their test reports dated 31.12.2021, confirmed that the three packets of undeclared goods were Natural Rough Diamonds, the import of which (rough diamonds) was restricted in terms of Policy Condition No. 3 of chapter 71 of ITC (HS) 2017, Schedule-I (Import Policy). The Natural Rough Diamonds is permitted for import only, if it was accompanied with Kimberley Process Certificate, as specified by Gems and Jewellery Export Promotion Council. In order to ascertain the exact value and quantity of the goods, Sri Kamal Kant Parekh, Government approved valuer was appointed. The valuer in the presence of two independent witnesses, the importer and the CHA examined the impugned goods. Shri Parekh prepared two separate valuation reports, one for Natural Rough Emerald and one for Natural Rough Diamonds. On completion of investigation, show cause notice dated 20.05.2022 was issued to the Appellant, which was adjudicated vide the impugned order.

2. The learned counsel submitted that the appellant had filed Bill of Entry No. 6869180 dated 29.12.2021 for import of 14474.45 carat/2897.89 grams of Natural Rough Emerald falling under CTH

71031031, declaring the transaction/assessable value of Rs. 4,52,26,504/- and the duty of Rs. 3,62,434/- was discharged. The consignment was opened and examined on 30.12.2021 in presence of Customs Broker as per the existing examination guidelines. There was no intelligence of any smuggling. The consignment contained 9 packets of Natural Rough Emerald as declared, weighing 14474.45 carat/ 2897.89 grams and 3 packets of undeclared Blue/White Stone rough weighing 271.75 Carat / 54.35 grams. Five samples were drawn from the 3 undeclared packets which were sent to GJEPC testing lab. The GJEPC confirmed the samples to be Rough Diamonds. As the import of Rough Diamond was restricted in terms of DGFT Circular No. 34/2015-2020 dated 28.09.2020 and was undeclared, and found with Natural Rough Emerald, the entire consignment was placed under seizure. The learned counsel submitted that the restrictions with regard to import of Natural Rough Diamonds were only with regard to production of KP certificate at the time of import. He stated that the appellant requested the Revenue to return the consignment of Natural Rough Diamond to the shipper/overseas suppliers, which was otherwise permitted vide Circular No. 53/2003-Cus. dated 23.06.2003.

3. The learned counsel further stated that the entire consignment was got valued by Shri Kamal Kant Parekh, said to be a Government approved valuer, in the presence of the Director of the appellant. However, the appellant was not permitted to confront or cross examine the said valuer. No cogent reasons were given for rejecting the declared value, and for getting

valuation done of Natural Rough Emerald wherein the value was correctly declared. He relied on the following decisions in support of his contentions:

- (i) **Bikash Saha Vs. CC, Kolkata – 2020 (371) ELT 763 (Tri.-Kol.)**
- (ii) **Rubal International Vs. CC, New Delhi – 2022 (381) ELT 93 (Tri.-Del.)**
- (iii) **PCC, ACC Import Vs. Wall Street Impex – CESTAT Final Order dated 15.12.2022.**
- (iv) **Motor Industries Co. Ltd. Vs. CC – 2009 (244) ELT 4 (SC).**

The learned counsel contended that no legally permissible reason was given for rejection of the declared value of Natural Rough Emerald, and merely states that the same was done as they were found with the undeclared goods does not find support in law. He relied on the following case laws:

- (i) **CC Calcutta Vs. South India Television P Ltd. – 2007- TIOL-126-SC.**
- (ii) **BBM Impex Pvt. Ltd. Vs. CC (Prev). Delhi – 2020- TIOL-958-CESTAT-Del.**

4. The learned counsel also submitted that there is not a single allegation that any amount over and above the invoice value as declared in respect of transaction of Emerald Stone was paid or payable. He relied the decision in the case of – **CCE & ST Noida Vs. Sanjivani NF Trading P. Ltd. – 2019-365-ELT 3-SC** to support his arguments.

5. The learned counsel further submitted that the Customs Valuation Rules, 2007 were not followed correctly. No reason was given by the adjudicating authority to skip Rule 7 and resort to Valuation under Rule 9 of Customs Valuation Rules. He submitted

that the Rules do not allow acceptance of higher of the two alternative values, which were arbitrary and fictitious.

6. The learned counsel further contended that the valuer was not in the list of Valuers so appointed by the Commissioner of Customs (Preventive), Jaipur. He stated that the valuation being subjective, the same is bound to vary and +/-20%, which is an accepted variation in the trade. The valuation cannot be enhanced merely on the basis of pure subjective opinion of one valuer or Chartered Engineer. To support his contention, he relied on the decision in the case of **CC Port Kolkatta Vs. N/s Best Mega International – 2023-TIOL-531-CESTAT-Kol.**

7. The learned counsel submitted that the statement under Section 108 of the Customs Act, 1962 is admissible as evidence and the Director of the appellant had, in his statement, stated that the declared value was the correct and negotiated transaction value of Natural Rough Emerald. The Director had also submitted that Natural Rough Diamonds were never ordered. He submitted that the entire show cause notice did not allege any concealment, but relevant sections had been invoked. In case of Natural Rough Emerald, the difference in valuation is Rs. 80 lacs approx. involving duty difference of Rs. 64,866/-. The learned counsel submitted that an exorbitant penalty of Rs. 54 lacs had been imposed, which was unrealistic and irrational. He submitted that it is a settled position of law that Redemption Fine has to be commensurate with the Margin of Profit. In support, he relied on the following decisions:

- (i) **DJP International Vs. CC, Delhi – 2017 (350) ELT 294-(Tri-Del).**
Maintained by Apex Court in 2017-350-ELT-A65-SC.
- (ii) **Bikash Saha Vs. PCC, Kolkatta – 2020 (372) ELT 884-(Tri.-Kol).**
- (iii) **Chahat Trading Corp. Vs. CC, New Delhi – 2017 (357) ELT 937 (Tri.-Del.).**

8. The learned counsel further submitted that no case had been made out of any mens rea or mis-declaration with intent to evade any duty, as the total duty liability was only Rs.2,747/-. In this regard, the learned counsel relied on the decision in the case of **M/s Devgan Mechanical Works Vs. CC, Ludhiana – 2021-TIOL-330-CESTAT-CHD.**

9. Learned Departmental Representative submitted that it is clear from the facts of the case that an attempt was made to clear of undeclared good (i.e. Natural Rough Diamond), which are restricted in nature, by the importer. The Policy condition No. 3 of Chapter 71 of ITC (HS) 2017, Schedule-I (Import Policy) clearly says that "import of rough diamond shall be permitted only if accompanied by Kimberley Process (KP) Certificate, as specified by Gem and Jewellery EPC". The importer could not produce the said mandatory certificate. Therefore, in absence of KPC, improper import of "Natural Rough Diamond" by way of mis-declaration amounts to smuggling. Apart from the undeclared goods, the declared goods i.e., "Natural Rough Emerald" was also found mis-declared in terms of its value. Therefore, the adjudicating authority had rightly found the impugned goods liable for confiscation under Section 111 of Customs Act, 1962 read with Section 118 and 119 of

the Act, and for omission and commission of the offence, the importer rendered himself liable for penalty under Section 112(a)(i) and 114AA of the Customs Act, 1962.

10. The learned Authorised Representative submitted that it is the regular practice for every **import consignment** that the goods imported are to be valued by the Government approved valuer/appraiser in compliance of Section 14 of the Customs Act, 1962. Moreover, the appellant has taken a baseless ground as the declared goods viz. "Natural Rough Emerald" possesses a self declared value itself by the importer and the same has not been rejected on the *prima facie* of presence of undeclared goods viz. "Natural Rough Diamonds". He contended that both declared and the undeclared goods were treated as separate entities and the Govt. Approved Valuer had ascertained the value of declared goods 'Natural Rough Emerald' to be Rs. 5,33,20,750/- (Rs. Five Crores thirty-three lacs twenty thousand seven hundred and fifty only) against the declared value of Rs. 4,52,26,504/- (Four Crores fifty two lacs twenty six thousand and five hundred and four only). The learned Authorised Representative submitted that the declared value pertaining to import made by the importer did not appear to be the true transaction value as envisaged under Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and was, therefore, liable to be rejected under Rule 12 of the Customs Valuation (Determination of Price of Impugned Goods) Rules, 2007. Further, the assessable value had to be re-determined by sequentially applying Rule 4 to 9 of the CVR, 2007.

11. The learned Authorised Representative stated that as per Notification No. 34/2015-2020 dated 28.09.2020, issued by DGFT, Ministry of Commerce, the undeclared goods i.e. 'Rough Diamonds' is restricted in terms of Policy condition No. 3 of Chapter 71 of ITC (HS) 2017 Import Policy 2015-2020, as import of rough Diamonds is permitted only if accompanied by Kimberley Process Certificate (KP Certificate) as specified by Gems and Jewellery EPC. The undeclared good i.e. rough diamonds weighing 271.40 Ct. was estimated at Rs. 10,98,670/- separately by the Govt. Approved Valuer. He strongly contended that the assessable value of the declared goods was provided in the form of Valuation report and the same was accepted and signed by the importer.

12. The learned Authorised Representative further submitted that it was during the course of examination, the undeclared goods viz. "Rough Diamond" were found in 3 packets and the same had not been declared in any of the import documents like B/E, Invoice etc. Further, the goods were restricted in nature, which signifies and establishes the involvement of the importer in the attempt to clear the undeclared and prohibited (without KP certificate) goods. The same was also averred from the para 5(i) & 5(j) of the statement of the importer recorded under Section 108 of the Customs Act, 1962 of the OIO NO. 53/2022-ADC dated 27.12.2022, whereby it appears the falsification of the signature and fabrication of the invoices and letter provided by the importer.

13. The learned Authorised Representative submitted that mis-declaration was detected by the department as 03 small packets of undeclared goods were found along with the declared Emerald

Rough stone. Therefore, the valuation of the entire consignment was done by the Govt. Approved Valuer as per procedure. Since, the imported goods were found mis-declared in respect of description, value, quantity and import policy tends them to be seized under Section 110 of the Customs Act, 1962.

14. We have heard the learned counsel for the appellant and the learned authorised representative for revenue. The issues under consideration are as follows:

- (i) Whether the valuation by the Government approved valuer of Natural Rough Emerald and the consequent imposition of redemption fine is correct?
- (ii) whether the imposition of redemption fine on Natural Rough Diamond is correct?

15. We proceed to deal with each of these issues independently. We find that the only reason given in the impugned order for rejecting the declared value was that undeclared Natural Rough Diamond were found during the examination of the import consignment. We note that no cogent reason has been given by the revenue for rejection of the transaction value. The learned counsel for the appellant has argued before us that the valuation has been done by so called Government approved valuer Shri Kamal Kant Parekh, who did not figure in the list of the Government approved valuers as intimated vide Public Notice no.03/2022 dated 08.03.2022. We have perused the contents of the aforesaid Public Notice and we find that it lists names of 29 members of the Gems and Jewellery Export Promotion Council, Jaipur/Regional Jewellers

Association empanelled for the purpose of identification, classification, purity, weight and valuation of precious/semiprecious stones, pearls as well as gold/silver and jewellery for customs purposes. The said Public Notice also supersedes the earlier Public Notice No. 02/2021 dated 21.01.2021. Perusal of the said Public Notice reveals that the name of the Shri Kamal Kant Parekh does not figure in this list of the Government approved valuers. This aspect has also not been clarified by the adjudicating authority in the impugned order. It has also been argued before us that valuation of precious stones is subjective. No valuer can give exact valuation of rough precious stones at any stage of time, however an expert the valuer may be. Generally, the prices are given with a margin of fluctuation of +/- 20% and the value declared by the appellant was well within this range. It has further been contended that the valuation report of the said Government approved valuer does not specify whether the rate is wholesale or retail sale value or the CIF value. Further, during the course of investigation itself, it has been observed that the valuation cannot be determined under Rules 4 to 7 of Customs Valuation Rules, 2007 as the nature of each stone and its value is distinct and varied, and even the market value cannot be ascertained. Consequently, other than the valuation report submitted by the valuer who does not appear in the panel of Government approved valuers, and there being no other corroborative evidence to establish any undervaluation by the appellant, the transaction value is liable to be accepted. We take note of the fact that the differential value is Rs 80 lakhs approximately, involving a mere duty difference of Rs. 64,866/-

only. We find that the Revenue has been unable to lead any evidence before us for the rejection of the transaction value. In this regard, it is seen that the Tribunal in the case of **Bikash Saha Vs commissioner of Customs (Prev), Kolkata [2020 (371) ELT 763 (Tri. Kol)]** has held as follows:

"6. However, we find that the valuation adopted in the impugned order is arbitrary. The learner Commissioner has not recorded any reason for rejecting the declared value in respect of 148 bales. He proceeded to redetermine the valuer for the goods when the misdeclaration was only in respect of 81 bales. Commissioner proceeded to redetermine the entire quantity of goods with citing any reasons for rejecting the value of the goods. The impugned order does not refer any valuation rules and it does not make it clear if the CVR, 2007 have been followed sequentially. Under the circumstances, we find it difficult to sustain such unreason order to the extent of the value of 148 bales declared by the appellant. We find that the valuation declared by the appellant is to be accepted.....".

16. Similarly, we find that the Supreme Court in the case of **Commissioner of Customs, Calcutta Vs South India Television (P) Ltd., [2007-TIOL-126-SC-CUS]** has held as follows;

"6. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent-importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. In the present case, the allegation is of under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price. On a plain reading of Section 14(1) and Section 14(1A), it envisages that the value of any goods chargeable to *ad valorem* duty has to be deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable

on such goods at the time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. **Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."**

16.1 In view of the above discussions, we hold that the Department has failed to prove that the transaction value/invoice price was incorrect. Consequently, the valuation done by the valuer

cannot accepted and is set aside. We now take up the matter relating to the imposition of Rs 50 lakh as RF on the said goods under Section 111 read with Section 118(a) and 119 of the Customs Act, 1962. The relevant provisions of Section 111 are reproduced hereinafter to appreciate the Revenue's contentions:-

"Section 111. Confiscation of improperly imported goods,etc.

The following goods brought from a place outside India shall be liable to confiscation: -

.....

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

.....

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

.....

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

.....

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;"

16.2 The imported goods viz., Natural Rough Emerald was declared in the Bill of Entry by the appellant. There is no discrepancy found either in its weight or carats. There is no

prohibition in the import of such Natural Rough Emerald. Therefore, the provisions of Section 111(d) is not attracted. It is an admitted fact that 3 packets of Natural Rough Diamonds were found along with the Natural Rough Emerald, which had not been declared by the appellant. As the said diamonds was not accompanied by the KP Certificate, the said goods took on the nature of prohibited goods. However, it is a fact on record that the said 3 packets were not concealed in any manner in the import consignment. Further, this came to light during the routine examination of the imported goods, and not on any intelligence or information. No Panchnama was drawn either. Therefore, the provisions of Section 111(i) is also not attracted. Section 111(m) is also not attracted as there is no case of undervaluation that has been established by Revenue. In view of the above, we hold that there is no case for imposition of Rs. 50 lakh as redemption fine on the Natural Rough Emerald.

17. We now come to the second issue on imposition of redemption fine on the undeclared Natural Rough Diamonds. It has been argued before us that the Department did not possess any intelligence or information about smuggling of such rough diamond. The import consignment was opened and examined in a routine manner by the customs officer wherein nine packets of Natural Rough Emerald and three packets of Natural Rough Diamond were found. It is on record that the packets were not concealed or hidden in any manner, to allege smuggling. We note that the original adjudicating authority has held that the Natural Rough Diamond was restricted in nature, and the appellant importer could not produce a valid Kimberley Process certificate, hence the goods

took on the nature of prohibited goods. Therefore, the original adjudicating authority has gone on to confiscate the Natural Rough Diamonds valued at Rs. 10,98,670/- under Section 111 of the Customs Act, 1962, with an option given to the importer to redeem the goods for re-export on payment of redemption fine of Rs. 2 lakh. It is a fact on record that 3 packets of natural rough diamond were found in the consignment which had not been declared by the appellant. It is also on record that such import of rough diamond was restricted in terms of DGFT circular number 34/2015 – 2020 dated 28.09.2020. The condition for import was that it had to be accompanied by a Kimberley process certificate. However, we note that the Director in his statement has accepted that he had not ordered the rough diamonds, and hence he could not produce the Kimberly Process Certificate. It has been also pleaded before us that the provisions of Circular No. 53/2003 Cus dtd 23.6.2003 vide para 6 allow the goods to be sent back to the exporting country in the same is not accompanied by the valid KP certificate. The relevant portion of the aforesaid notification is reproduced hereunder:

"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."

17.1 The learned counsel has placed before us a copy of the letter from the exporter stating that the appellant importer had only ordered 14474.45 carats of Natural Rough Emerald, whereas

due to mistake of their staff three packets of Natural Rough Diamond were kept in this parcel. The subsequent letter by the Director of the exporter company has also corroborated that they had sold only Natural Rough Emerald to the appellant and the consignment of 3 packets of Natural Rough Diamond was incorrectly packed in the consignment of the appellant. We note that the said three packets of Natural Rough Diamonds were not concealed or mixed with the consignment of Natural Rough Emerald and were in fact packed different packets and was quite visible to the naked eye when the consignment was opened for examination. The Department has not been able to establish that the appellant had deliberately mis-declared the consignment and had attempted to smuggle Natural Rough Diamond in the garb of Rough Emerald stone, in order to avoid submitting the KP certificate. We note that the appellant from the very first instance has categorically stated that the said goods were never ordered by him and that he is aware that the import is restricted subject to the availability of the KP certificate. We also note that the Department has not drawn any Panchnama to establish that the rough diamonds were concealed in the import consignment in any manner. The appellant had submitted necessary documentation to evidence that he had not placed the order for import of Natural Rough Diamond to the exporter. The appellant has also clarified the different signatures in the invoice and the email belong to the owner and the authorised signatory. Consequently, it is established that there was no attempt by the appellant import these undeclared goods and the same has happened due to the mistake

on the supplier side. Therefore, we hold that the goods viz., Natural Rough Diamond are permitted to be re-exported, without payment of redemption fine.

18. In view of the above discussions, we hold that no penalty or fine is leviable on the appellant. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in open Court on 09.10.2023)

**(Dr. Rachna Gupta)
Member (Judicial)**

**(Hemambika R. Priya)
Member (Technical)**

RM