

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench

Court – I

Customs Appeal No. 40654 of 2020

(Arising out of OIO No. 48/SA (48) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Diamond India Ltd

2A, A-Wing, Laxmi Towers, Bandra Kurla
Complex, Bandra East, Mumbai – 400 051

.....Appellant

VERSUS

**Commissioner of Central Tax
Chennai - VII**

GST Road, Chennai,
Tamil Nadu – 600 027

.....Respondent

With

Customs Appeal No. 40653 of 2020

(Arising out of OIO No. 48/SA (48) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Nirakar Chand, CEO

2A, A-Wing, Laxmi Towers, Bandra Kurla
Complex, Bandra East, Mumbai – 400 051

.....Appellant

VERSUS

**Commissioner of Central Tax
Chennai - VII**

GST Road, Chennai,
Tamil Nadu – 600 027

.....Respondent

with

Customs Appeal No. 30091 of 2021

(Arising out of OIO No. 47/SA (47) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Rahul Gupta

M/s Bullionline LLP, B/3, PP Tower,
Netaji Subash Place, Pitampura, Delhi – 110 034

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

(2)

with

Customs Appeal No. 30092 of 2021

(Arising out of OIO No. 47/SA (47) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Bullionline LLP

B/3, C-1, 2, 3, PP Tower,
Netaji Subash Place, Pitampura, Delhi – 110 034

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

with

Customs Appeal No. 30093 of 2021

(Arising out of OIO No. 48/SA (48) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Ashish Gupta, Director

M/s Jurassic Refiners & Jewels Pvt Ltd,
1157/1124, 3rd Floor, Kucha Mahajani,
Chandni Chowk, Delhi – 110 006

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

with

Customs Appeal No. 30094 of 2021

(Arising out of OIO No. 48/SA (48) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Jurassic Refiners & Jewels Pvt Ltd

1157/1124, 3rd Floor, Kucha Mahajani,
Chandni Chowk, Delhi – 110 006

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

(3)

with

Customs Appeal No. 30192 of 2021

(Arising out of OIO No. 47/SA (47) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Diamond India Ltd

2A, A-Wing, Laxmi Towers, Bandra Kurla
Complex, Bandra East, Mumbai – 400 051

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

with

Customs Appeal No. 30193 of 2021

(Arising out of OIO No. 47/SA (47) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Nirakar Chand, CEO

2A, A-Wing, Laxmi Towers, Bandra Kurla
Complex, Bandra East, Mumbai – 400 051

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

with

Customs Appeal No. 30254 of 2023

(Arising out of OIO No. 48/SA (48) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Satyanarayana Sharma

Govt Jewellery Valuer, 4-3-258, Giriraj Lane,
Bank Street, Koti, Hyderabad – 500 095

.....Appellant

VERSUS

**Pr. Commissioner of Central Tax
Hyderabad**

GST Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

(4)

and

Customs Appeal No. 30255 of 2023

(Arising out of OIO No. 47/SA (47) ADG (ADJ.)/DRI, MUMBAI/2020-21 dt.26.08.2020
passed by ADG (Adjudication), DRI, Mumbai)

Satyanarayana Sharma

Govt Jewellery Valuer, 4-3-258, Giriraj Lane,
Bank Street, Koti, Hyderabad – 500 095

.....Appellant

VERSUS

**Pr. Commissioner of Central Tax
Hyderabad**

GST Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

Appearance

Shri Arjun Raghavendra M, Shri Akshay Anand & Shri D.V. Subba Rao, Advocates
for the Appellants.

Shri P.R.V. Ramanan, AR for the Respondent (Special Counsel).

Coram:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30054-30063/2024

Date of Hearing: 03.10.2023

Date of Decision: 08.02.2024

[Order per: ANIL CHOUDHARY]

M/s Bullionline LLP ('BL' for short) and M/s Jurassic refiners and Jewels P Ltd. (Jurassic or JR for short) after making exports of plain gold jewellery i.e. kadas, obtained duty-free gold bars from Diamond India Ltd ('DIL' for short) under the "Replenishment Scheme" of Foreign Trade Policy (FTP) 2015-20 during the period 2016 to 2017. DIL had, inter alia, imported and sold 1426 kgs of gold to BL and similarly 800 kgs gold were sold to Jurassic Refiners & Jewels Pvt Ltd. The consignments of gold were cleared by DIL as Nominated agency, under bond, claiming exemption under Notification No.57/2000 dt.08.05.2000. DIL is a Nominated agency for import of gold, silver, etc., in terms of DGFT Notification No.88/2008 dt.26.02.2009 r.w. para 4.34 of FTP. Both BL & JR had exported gold kadas under shipping bills and upon fulfilling the prescribed conditions, had claimed replenishment of gold under the 'replenishment scheme' from nominated agency – DIL.

2. As per the two Impugned Orders, customs duty has been demanded from DIL along with equal penalty under Sec 114A in respect of duty-free import of gold supplied to BL & JR and penalty has been imposed on BL and JR as well as on the partner/director of these firms viz., Mr. Rahul Gupta & Mr. Ashish Gupta. Penalty has also been imposed on Mr. Nirakar Chand, CEO of DIL. Penalties on the three customs appointed jewellery valuers has also been imposed.

3. As per CBEC Circular No.27/2016 dt.10.06.2016, the nominated agency – DIL was mandated to obtain (i) EP Copy of Shipping bill from Exporter for quantity released/to be released, as replenishment of gold content exported (ii) BRC (Bank realisation certificate) to monitor the export proceeds, realisation of such export shipments against which they have replenished gold. (iii) Further to submit monthly account – exporter wise as per format, to the customs station of import.

4. Separate two SCNs dt.31.08.2018 were issued by DRI, to DIL in respect of transactions with BL and SCN dt.26.09.2018 in respect of transactions with JR & others demanding duty of Rs.39.74 crores plus Rs.23.99 Crores (for JR) from DIL and proposing penalty on DIL and on others. The SCN, inter alia, alleged as follows:

4.1. DIL failed to ensure compliance of FTP provisions which entailed discharge of the duty in terms of the bond executed by them. Therefore, in terms of Para 4.78(a) of HBP read with Customs Notification No.57/2000, since exports were not made in accordance with the mandatory requirements for replenishment, DIL are liable to pay duty to the extent of quantity of gold supplied by them to BL & JR.

4.2. BL, of which Mr. Rahul Gupta is the active partner and JR of which Mr. Ashish Gupta is director, having their head office at New Delhi and branch office at Hyderabad, were engaged in trading of bullion and export of jewellery. BL/JR engaged a job worker – M/s Ghanshyamdas Jewellery at Hyderabad and got jewellery manufactured under job work. BL/JR sent gold under challan to the job worker and such challans were numbered and raised in triplicate. Duplicate (pink copy) was sent to said job worker and another two copies were retained by BL/JR. The said challans contained information such as description of goods, identification marks and numbers, quantity, tariff classification and estimated value of inputs/ partially processed inputs. It also contained date and time and details of manufacturing/processing

required to be done. Such challans were issued by the authorized signatory of BL/JR and it also had signature of job worker. Further, for use in manufacturing, the required alloy was also supplied to job worker under the same challan. It appeared that BL/JR had not given design, style and weight for jewellery to be made and the number of items to be manufactured. The job worker admitted that they have manufactured kadas. BL/JR had not given them any specific sizes, specification/ design for kadas. They had manufactured various sizes ranging between 40 gms to 80 gms as per the standard sizes.

- 4.3. The said job worker manufactured and issued jewellery to BL/JR under delivery challans. Delivery challans contained information such as ornaments weight, wastage, receipt challan reference, making charges, etc.
- 4.4. BL/JR exported the jewellery manufactured by the said job worker, under replenishment scheme and thereafter, obtained gold from DIL under replenishment scheme as per the FTP read with Notification No. 57/2000. At the time of filing the shipping bills, they had submitted provisional invoices to the customs based on the 'notional rate certificate' issued by DIL (as per para 4.81(c) of HBoP). The provisional invoice consisted of information such as (i) Particulars, (ii) Gross weight of jewellery, (iii) net weight with wastage, (iv) rate per gram, (v) Total value in USD, (vi) FOB in USD, (vii) Wastage, (viii) Making charges (+) value addition @ 2.05% and (ix) Weight in 99.5% purity terms. FOB value mentioned in the shipping bills was inclusive of freight. All the exports were made to the foreign buyer – M/s MN Khan Jewellers (FZE), Sharjah, UAE. BL had filed 35 shipping bills for export of gold jewellery under replenishment scheme at Air Cargo Complex, Shamshabad. Similarly JR had exported jewellery vide 22 shipping bills. The particulars column of all such provisional export invoices of BL/JR mentioned "0.916 purity fully mechanized plain gold jewellery", wastage @ 0.85973% and making charges (+) value addition @ 2.05%.
- 4.5. After the exports and realisation of export proceeds, BL obtained/purchased duty-free gold under the replenishment scheme from DIL against export of gold jewellery vide 33 shipping bills out of the total 35 shipping bills filed by them. A total of 1426 kgs of duty-free gold had been obtained/purchased by them under replenishment scheme against the 33 shipping bills, which fact was confirmed by

DIL. DIL also confirmed that they provided 'notional rate certificate' to BL/JR (on booking of gold at the time of export), and on such notional rate, BL/JR issued provisional export invoices. DIL was fully aware that the export invoices were not final and therefore, the value addition declared on such invoices may not be final. It is alleged that DIL supplied duty-free gold to BL/JR on the basis of the declarations/endorsements in the shipping bills and provisional invoices, without verifying whether or not the conditions prescribed in the FTP for issuing the duty-free gold under replenishment scheme, were met by them. Similarly JR also got replenishment of gold on basis of 22 shipping bills

- 4.6. It has been alleged that Mr. Harish Chand Agarwal of M/s Ghanshyamdas Jewellery (job worker) has stated in his statement that they manufactured gold kadas for BL/JR. The gold bars of 0.999 or 0.995 fineness, with marking of Edelweiss, Jurassic and RKM & alloy were received under job work-challan at their factory. As per the oral agreement, they manufactured kadas of 22 carat or 0.916 purity and delivered under delivery challans. BL/JR had not given any design, style, specification, etc., for manufacturing of kadas. They manufactured gold kadas ranging from 40 gm to 80 gm. They did not have machinery to manufacture kadas on fully mechanized system and the manufacturing process adopted by them could be called as – semi mechanized process. They never issued any invoice/ delivery challan describing the articles of gold jewellery as manufactured on fully mechanized system.
- 4.7. It has been alleged that Mr. Rahul Gupta/Mr. Ashish Gupta, partner/director of BL/JR respectively, had admitted in his statement that they had not verified with the job worker as to whether the manufacturing of articles is by fully mechanized process or not. They have calculated the value addition not as per the formula given in the FTP, but by taking value of jewellery (+) value of wastage shown in the export invoice, on the gold rate as on the date of export, as provided by DIL, as the value of input.
- 4.8. BL also stated by their letter dt.17.06.2017 that they first raised provisional invoice at the time of export and final invoice was raised once replenishment gold was purchased against such export and the account was settled with the overseas buyer (remittance received) on the basis of final invoice.

- 4.9. It appeared to Revenue based on the statement of job worker, that the jewellery exported by BL/JR under the replenishment scheme, was not manufactured by fully mechanized process, rather semi-mechanized process. Hence the minimum value addition required is @ 3.5% as prescribed in Para 4.61(a) of HBP and not minimum value addition @ 2.00%, as declared by BL/JR.
- 4.10. BL/JR, along with other export documents, had submitted/presented the jewellery (export goods) and after examination by the registered approved jewellery valuer, certifying the purity of jewellery, wastage declared and the jewellery under export being mechanized plain gold jewellery, was permitted to be exported by the Proper officer. The said valuer(s), when questioned during investigation by DRI, admitted that they were entitled to issue certificate to the extent of purity only, whereas, they have issued certificates to BL/JR certifying also the wastage and the process of manufacture, just by copying the details from the export documents without verifying whether the process of manufacture was fully mechanized or not.
- 4.11. Mr. Mohammed Nayeemuddin, Managing Partner of Viva Customs – CHA, inter alia, stated in his statement that the value adopted in shipping bills was notional value or provisional value.
- 4.12. To arrive at the correct value addition, as per the formula prescribed under FTP, the details from the documents as recovered from the premises of BL/JR were captured in the work sheets A, A1, B, B1 and C. As per the work sheet, aggregate value addition on provisional values was '-11.82%' and on final value was '-14.44%'. Thus, in both cases the value addition appeared to be negative, as value of input was more than the value of FOB/realization. As per the provision in Para 4.38 of FTP read with Para 4.61 of HBP, BL/JR should have achieved minimum value addition @ 3.5%. Thus, they appeared to be not eligible for availing duty-free gold under replenishment scheme, against the exports made by them.
- 4.13. Further alleged, DIL being nominated agency under FTP, by executing bond with the condition that they shall pay all duties and charges claimable on account of the goods under the Customs Act and the rules thereunder, undertook to comply with the conditions and limitations as stipulated in FTP read with HBP, as amended from time to time. Further, undertook that in case of failure, the customs

department may recover tax due from them in the manner as laid down in the Act.

- 4.14. Mr. Nirakar Chand, CEO of DIL, stated that they have issued gold to BL/JR equivalent to gold contained in jewellery exported under replenishment scheme by accepting the Export Promotion (EP) copy of shipping bill, customs approved invoice and bank letter supporting receipt of amounts/remittance. As per the FTP, to avail facility under replenishment scheme, by accepting EP copy of shipping bill, customs invoice and bank letter regarding receipt of the amount. As per the FT policy, an exporter was required to export jewellery made out of locally procured gold and realize the export proceeds and thereafter, obtain duty-free gold under the replenishment scheme. It appeared that DIL had not verified the required parameters in the shipping bill and corresponding export invoices for issuance of duty-free gold under the scheme.
- 4.15. It further appeared that there was no written agreement for the job work between BL/JR and the Job worker. It was orally agreed for a rate of Rs.5/gm. Further, the exporters declared higher making charges in their export invoices. There was no specific design and size given to the job worker who was asked to manufacture standard size kadas. All the purchase orders from M/s MN Khan Jewellers (FZE), Sharjah to BL/JR were for handcrafted jewellery with no specification as to weight and size of kadas. Though the purchase order was placed for handcrafted jewellery, BL/JR declared the export goods as fully mechanized plain gold jewellery declaring a uniform value addition @ 2.05% which was just above the prescribed minimum value addition of 2% under FTP for 'fully mechanized jewellery'. At the time of export, BL/JR raised a provisional export invoice by adopting the value based on 'notional rate certificate' issued by DIL. Further, in the provisional invoice, they declared 'making charges (+) value addition' @ 2.05%, which they claimed was fixed in consultation and agreement with the buyer. Final invoice was raised subsequently, upon receipt of remittance and/or finalization of the provisional invoice, which was dependent upon procurement of gold (duty free) from the nominated agency and the notional rate at the time of export.
- 4.16. It appeared to Revenue that BL/JR procured duty-free replenishment gold from DIL - the nominated agency, based on wrong

description of the export goods (as the jewellery exported appeared to be not made by fully mechanized process) and claiming making charges as value addition achieved, knowing well that minimum value addition required for fully mechanized jewellery was 2%. The certificate obtained from the jewellery valuer before export not only certified the purity of gold but also the description and wastage. As it appeared that the exported jewellery is not manufactured under fully mechanized process, the prescribed value addition for other jewellery was 3.5% as per Para 4.61 of HBP, which the Appellant failed to have achieved.

- 4.17. The value addition under the FTP has to be worked out by formula, which is given hereinafter. It was only during investigation that the process of manufacture was ascertained from the job worker and the data required for calculation of value addition was retrieved from the documents. So far, the price of procurement of gold is concerned, BL/JR had contended that price should be actual price at which gold/silver/platinum was purchased by nominated agency (+) permitted service charges levied should be included in the price and not under any other method or common parlance. This contention of Appellants appeared to be misplaced as reference to Para 4.82 of HBP was not at all relevant for the purposes of calculating value addition, as Para 4.82 only refers to the mechanism to be adopted by the nominated agency while procurement/issuance of gold/silver/platinum to the exporters.
- 4.18. It further appeared that while exact value of input was available (domestic price at which BL/JR purchased gold from refiners located in DTA), Appellants adopted the notional value for arriving at value addition to avail undue benefits. The value as per notional rate certificate issued by DIL, reflected value of gold (import price) which was prevalent on the date of issue of certificate, which had no relation with the value of inputs used in the manufacture or export of goods. Thus, it appeared that BL/JR with intent to evade payment of duty on the replenishment gold, which they were clearly not entitled as per the FTP, mis-declared the description of goods, value addition achieved, value of wastage and filed shipping bill which appeared to be mis-declared. It further appeared that BL/JR were required to achieve a minimum value addition of 3.5% instead of 2.05% as claimed by them. It further appeared that as gold jewellery was

exported in violation of conditions for replenishment scheme under FTP 2015-20, it further appeared to be covered under definition of 'prohibited goods' as per Sec 2(33) and hence, liable for confiscation in terms of Sec 113(d) & (i) of the Act.

- 4.19. It has been further alleged that DIL imported and supplied gold under claim of exemption under the replenishment scheme to BL/JR on the basis of export documents submitted by the exporters, knowing fully well that the export had been made on notional rate as they only had issued the notional rate certificate. DIL was aware that the value declared in the shipping bill was not final and BL/JR had claimed to have achieved the value addition on such notional rate. DIL was also aware that BL/JR had misrepresented the making charges shown in the provisional invoices, as the value addition, which was certainly not as per the provisions and the method prescribed to calculate value addition under FTP. Thus, it appeared that DIL without proper verification whether BL/JR have fulfilled the requirements under FTP for making them entitled for the duty-free gold against the exports, still issued gold imported under exemption to them, without verifying the value in final/revised invoice. As per CBIC Circular No. 27/2016-CUS dt.10.06.2016 read with Notification No.57/2000-CUS, the nominated agency is mandated to ensure the compliance of the provisions of Para 4.38 and 4.39 of FTP and Para 4.60 and 4.61 of HBP 2015-20. It further appeared that DIL failed to ensure the compliance of provisions of FTP, thereby rendering them liable to discharge the duty in terms of the bond executed by them.
- 4.20. Mr. Rahul Gupta, partner of BL, and Mr Ashish Gupta dir of JR appeared to be the person(s) who took care of the activities as well as the tax matters. It further appeared that he is responsible for misrepresentation and mis-interpretation of the FTP and the achievement of the minimum value addition. The material facts appeared to be wrongly declared in the shipping bills. Thus, it appeared that he has knowingly violated the provisions of the Customs Act and appeared liable to penalty under Sec 114 and 114AA of the Act.
- 4.21. Mr. Nirakar Chand, CEO of DIL was overall in-charge of precious metal business. He was fully aware of the issue of duty-free gold under replenishment scheme to BL/JR, against the shipping bills with provisional invoice, showing value as per notional rate certificate

issued by them. He admitted that the exporter, before the export of jewellery approaches DIL for issue of 'notional rate certificate', as the price of jewellery was not fixed with the buyer. Thus, he was aware of the fact that there would be change in the value in final invoice issued by the exporters, which had bearing on the value addition. But he failed to take any steps to verify the fulfilment of the conditions of the notification and circular read with FTP. It appeared that he connived with the exporters – BL/JR resulting in evasion of customs duty on the gold supplied by them and thus, appeared to be liable to penalty under Sec 114AA of the Act.

4.22. Mr. P. Bhawarilal Jain, Mr. Satyanarayana Sharma and Mr. B. Ramkumar Jain, the Government/authorized jewellery valuers, appeared to have wrongly, and without proper verification, certified the wastage details and the process of manufacture of jewellery in the certificates issued at the instance of the customs dept. to BL/JR. These persons admitted that they were only entitled to certify the purity and not other aspects. The said certificates were presented by BL/JR to mislead the customs and the nominated agency – DIL for availing duty-free gold against the shipping bills, by mis-declaring the rate and value addition. Therefore, it appeared that aforementioned three jewellery valuers knowingly abetted with BL/JR in wrongly availing duty-free gold under the replenishment scheme. It further appeared that the exported jewellery is liable for confiscation and the aforementioned Government approved jewellery valuers are liable for penalty under Sec 114 & 114AA of the Act.

5. Accordingly, SCNs dated 31.08.2018 (BL) & dated 26.09.2018 (JR) was issued by DRI to all the aforementioned persons proposing demand of duty from DIL on the quantum of gold given under replenishment scheme to BL/JR and penalty was proposed on DIL, both the exporters – BL/JR as well as its partners, viz., Mr. Rahul Gupta, Mr. Ashish Gupta. Penalty was also proposed on the aforementioned three jewellery valuers.

6. SCN was adjudicated vide separate OIO both dated 26.08.2020 by the Adjudicating Authority – Additional Director General (Adjudication) (DRI), and proposed demands confirmed against DIL with penalty and penalty was also imposed on all others, as detailed hereinafter.

7. Being aggrieved, the Appellants are in Appeal before this Tribunal.

8. The issues in the present appeals are as follows:

- (a) whether the Adjudicating Authority has rightly demanded, customs duty Rs.39,74,06,377/- plus Rs.23,99,44,332/- from M/s Diamond India - the nominated agency (appointed and monitored by DGFT in terms of Foreign Trade Policy 2015-20 r/w Foreign Trade Development and Regulation Act 1992).
- (b) Whether it has been rightly held that the exported goods (not 'export goods' as defined and dealt under Section 113 of Customs Act 1962) in question were liable for confiscation under Section 113(i) of the Customs Act, 1962, in the event where such jewellery has already been exported (without giving any bond) and purity of gold is not disputed and only issue is regarding misdeclaration of manufacturing process (mechanised or hand crafted), on the ground that if goods are loaded in machine by hand and mechanized tools are used, then would manufacturing process not be called fully mechanized.
- (c) Whether as per FTP, DGFT is the Final Authority in interpreting the FTP, and therefore, can the clarification of DGFT (for value addition) be disregarded by the Adjudicating Authority, on account of being sent by electronic means (email).
- (d) Whether the impugned order is time barred, having been passed beyond the prescribed time as provided u/s Section 28(9) of Customs Act and is also hit by the Judgment of Hon'ble Delhi High Court in Swatch India, wherein it is has been held that adjudication beyond the period laid down in Section 28(9) would be a nullity in law.
- (e) Whether the Adjudicating Authority have rightly imposed penalty (i) of Rs.8,00,00,000/- under Section 114 (iii) of the Customs Act, 1962 on M/s Bullionline LLP; (ii) of Rs. 1,00,00,000/- on Shri Rahul Gupta, Partner of M/s Bullionline LLP, under Section 114(iii) and 114AA of the Customs Act, 1962, each; Rs. 6 crore on Jurassic Refiners and Rs.70 Lakhs each u/s 114(iii) and 114AA on Mr. Ashish Gupta.
- (f) Further, in case of BL whether penalties have been rightly imposed as under:-

S.No.	Penalty imposed on	Amount of penalty	Penalty imposed under Section
1.	Shri P. Bhawarilal Jain (Govt. Approved Jewellery Valuer)	Rs.25,000/-	Sec 114(iii) of the Customs Act 1962
		Rs.25,000/-	Sec 114AA of the Customs Act 1962

2.	Shri Satyanarayana Sharma (Govt. Approved Jewellery Valuer)	Rs.25,000/-	Sec 114(iii) of the Customs Act 1962
		Rs.20,000/-	Sec 114AA of the Customs Act 1962
3.	Shri B. Ramkumar Jain (Govt. Approved Jewellery Valuer)	Rs.25,000/-	Sec 114(iii) of the Customs Act 1962

(g) Similarly, in case of JR whether penalties have rightly been imposed as under:-

S.No.	Penalty imposed on	Amount of penalty	Penalty imposed under Section
1.	Shri P. Bhawarilal Jain (Govt. Approved Jewellery Valuer)	Rs.20,000/-	Sec 114(iii) of the Customs Act 1962
		Rs.10,000/-	Sec 114AA of the Customs Act 1962
2.	Shri Satyanarayana Sharma (Govt. Approved Jewellery Valuer)	Rs.20,000/-	Sec 114(iii) of the Customs Act 1962
		Rs.10,000/-	Sec 114AA of the Customs Act 1962
3.	Shri B. Ramkumar Jain (Govt. Approved Jewellery Valuer)	Rs.20,000/-	Sec 114(iii) of the Customs Act 1962

9. For correct appreciation of issue involved in the Appeals, the relevant provisions and clarifications etc., are reproduced below:

9.1. Para 4.41 of FTP reads as under:

"4.41

Nominated Agencies

- (i) *Exporters may obtain gold / silver / platinum from Nominated Agency. Exporter in EOU and units in SEZ would be governed by the respective provisions of Chapter-6 of FTP / SEZ Rules, respectively.*
- (ii) *Nominated Agencies are MMTC Ltd, The Handicraft and Handlooms Exports Corporation of India Ltd, The State Trading Corporation of India Ltd, PEC Ltd, STCL Ltd, MSTC Ltd, and Diamond India Limited*
- (iii) *Four Star Export House from Gems & Jewellery sector and Five Star Export House from any sector may be recognized as Nominated Agency by Regional Authority. Reserve Bank of India can authorize any bank as Nominated Agency.*
- (iv) *Procedure for import of precious metal by Nominated Agency (other than those authorized by Reserve Bank of India and the Gems & Jewellery units operating under EOU and SEZ schemes) and the monitoring mechanism thereof shall be as per the provisions laid down in Hand Book of Procedures.*

(v) *A bank authorised by Reserve Bank of India is allowed export of gold scrap for refining and import standard gold bars as per Reserve Bank of India guidelines."*

9.2. As per the scheme introduced by the Government of India, Ministry of Commerce and implemented by DGFT – 'Export against supply by Nominated Agencies', DIL imported gold (the goods) without payment of customs duty and supplied the same to various exporters for the manufacture of jewellery and subsequent export. The Exemption Notification No. 57/2000 dated 08.05.2000 gives outright exemption to the import made by Nominated agency, in case of 'Export against supply by Nominated Agencies'. Duty is payable only when exports quantity do not tally (short fall) with quantity given to exporters, in advance procurement scheme.

10. In the instant case, DIL imported goods during the period 2016-17 and supplied by way of replenishment (post export) to M/s Bullion Line LLP (BL) and to M/s Jurassic Refiners Pvt. Ltd. (JR).

11. The exemption notification (as amended till December 2016) is reproduced below:-

Notification No.57/2000-Customs

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, (52 of 1962), and in super-session of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 144/93-Cus. dated the 28th June, 1993 [G.S.R. 480(E) dated the 28th June, 1996] except as respects things done or omitted to be done before such super-session, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts silver, gold and platinum, falling under heading Nos. 71.06, 71.08 and 71.10 respectively of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India.-

- A. as replenishment under the Scheme for 'Export through Exhibitions/Export promotion Tours/Export of Branded Jewellery as referred to in Paragraph 4.46 of the Foreign Trade Policy, read with relevant provisions of chapter 4 of the Handbook of Procedures, Volume 1, or
- B. under the Scheme for 'Export Against Supply by Nominated Agencies' as referred to in Paragraph 4.41 of the Foreign Trade Policy, read with relevant provisions of Chapter 4 of the Handbook of Procedures, Volume-1, from the whole of the duty of customs leviable thereon, which is specified in the said First Schedule, and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act

Provided that in the case of import of gold/silver/platinum as replenishment under the scheme for "Export through Exhibitions/ Export Promotion Tours/ Export of Branded Jewellery, the importer undertakes to fulfill the conditions of Foreign Trade Policy and relevant provisions of the Handbook of Procedures, Volume-1 and produces such documents as stipulated in the Foreign Trade Policy and the Handbook of Procedures, Volume-1 and produces such proof of exports made through exhibitions /export promotion tours etc, as may be

required by the Assistant Commissioner of Customs or the Deputy Commissioner of Customs to satisfy himself with regard to eligibility of the importer for the duty free import of replenishment material:

Provided further that in the case of import of gold / silver/platinum under the scheme for Export Against Supply by Nominated Agencies, the importer executes a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, undertaking to export, either by itself or through other exporters, gold / silver / platinum jewellery or articles, as the case may be, including studded articles having gold/ silver/platinum content equivalent to the imported gold/ silver/ platinum within a period of ninety days from the date of issue of gold / silver / platinum to the exporters, and binding himself to pay on demand duty on quantity of gold/ silver / platinum representing the difference between the quantity issued and that contained in the exported jewellery or articles.

Provided also that the nominated Agencies (except for those authorised by RBI) shall follow the procedure and fulfill the conditions as specified in the Policy circular no. 77 (RE-2008)/2004-09 dated 31st March 2009 as amended from time to time, issued by Director General of Foreign Trade.-,

Explanation-for the purpose of this notification,-

(a) "Foreign Trade Policy, 2015-2020" means the Foreign Trade Policy, 2015-2020, notified by the Government of India in the Ministry of Commerce and industry published in the Gazette of India, Extraordinary, Part - II, Section 3, Sub section (II) vide notification No. 01/2015-2020, dated the 1st April, 2015, as amended from time to time;

(b) "Handbook of Procedures, Volume-1" means the Handbook of Procedure, Volume-1, notified by the Government of India in the Ministry of Commerce and industry published in the Gazette of India, Extraordinary, Part - I, Section 1 vide Public NoticeNo. 01/2015-2020dated the 1st April, 2015, as amended from time to time;

(c) "Nominated Agencies" means,-

- (1) Metals and Minerals Trading Corporation Limited (MMTC);
- (2) Handcraft and Handloom Export Corporation (HHEC);
- (3) State Trading Corporation (STC);
- (4) Project and Equipment Corporation of India Ltd. (PEC);
- (5) STCL Ltd;
- (6) MSTC Ltd;
- (7) Diamond India Ltd (DIL);
- (8) Four star export house from Gems & Jewellery sector and Five star export house from any sector as may be recognized as nominated agencies by Regional Authority in terms of the Foreign Trade Policy;

Any bank as authorized by Reserve Bank of India (RBI) as Nominated agency;"

12. As per above notification, it provides for an exemption for Nominated agencies importing gold under scheme "Export against supply by Nominated Agencies", wherein, the second proviso envisages - that if exporter has taken gold for manufacturing and export thereof of jewellery (under Bond) and such exports are not effected, then in such situation, exemption shall not be

available for such specific quantity (short fall) and as consequence, duty shall be payable.

13. Relevant provisions of Foreign Trade Policy 2015-20 related to Gems & Jewellery sector are as under:

"4.00 Objective: Schemes under this Chapter enable duty free import of inputs for export production, including replenishment of input or duty remission.

4.33 Schemes-The schemes are as follows:

- (i) Advance Procurement/Replenishment of Precious Metals from Nominated Agencies;*
- (ii) Replenishment Authorisation for Gems;*
- (iii) Replenishment Authorisation for Consumables;*
- (iv) Advance Authorisation for Precious Metals.*

4.34 Advance Procurement/ Replenishment of Precious Metals from Nominated Agencies

(i) Exporter of gold / silver / platinum jewellery and articles thereof including mountings and fittings may obtain gold / silver / platinum as an input for export product from Nominated Agency, in advance or as replenishment after export in accordance with the procedure specified in this behalf.

(ii) The export would be subject to wastage norms and minimum value addition as prescribed in paragraph 4.60 and 4.61 respectively in the Handbook of Procedures.

4.38 Value Addition (norms)

Minimum Value Addition norms for gems and jewellery sector are given in paragraph 4.61 of Handbook of Procedures. It would be calculated as under:

$$VA = (A-B)/B \times 100, \text{ where}$$

A = FOB value of the export realised / FOR value of supply received.

B = Value of inputs (including domestically procured) such as gold / silver / platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplier.

4.39 Wastage Norms- Wastage or manufacturing loss for gold / silver / platinum jewellery shall be admissible as per paragraph 4.60 of Handbook of Procedures."

14. Relevant provisions of Hand Book of Procedures 2015-20 related to Gems & Jewellery sector are as under:

"2.57 Interpretation of Policy

(a) The decision of DGFT shall be 'final and binding' on all matters relating to interpretation of Policy, or provision in Handbook of Procedures, Appendices and Aayat Niryat Forms or classification of any item for import / export in the ITC (HS).

4.60 Wastage Norms

Maximum wastage or manufacturing loss on gold/silver/ platinum jewellery and articles thereof is as follows:

SNo	Items of export	Percentage of wastage by weight with reference to Gold/Platinum/Silver Content in export item	
		Gold/Platinum	Silver
a)	Plain jewellery, articles, and ornaments like Mangalsutra containing gold and black beads/ imitation stones, cubic zirconia diamonds, precious, semi-precious stones.	2.5 %	3.2 %
b)	Studded jewellery and articles thereof	5.0 %	5.0 %
c)	Mountings and findings manufactured (by non-mechanised process) indigenously	2.5%	3.2%
d)	Any jewellery/articles manufactured by a fully mechanized process and unstudded.	0.9%	0.9%
e)	Mountings, whether imported or indigenously procured/ manufactured, used in studded jewellery	1.8 %	1.8 %
f)	Gold/silver/platinum medallions and coins (excluding coins of nature of legal tender)	0.2%	0.2%
g)	Fittings and mountings manufactured by mechanized process	0.9%	0.9%

4.61 **Value Addition** under scheme for export of jewellery, value addition shall be calculated as per paragraph 4.38 of FTP. Minimum value addition shall be:

SNo	Items of export	Minimum Value Addition
a)	Plain gold jewellery, Articles and ornaments like Mangalsutra containing gold and black beads/imitation stones, except in studded form of jewellery.	3.5 %
b)	All types of Studded gold	6.0% (for those studded with coloured Gem stones) and 7.0% (for those studded with diamonds).
c)	Any jewellery/articles manufactured by <u>fully mechanised</u> process	2.0 %
d)	Gold medallions & coins (excluding coins of nature of legal tender)	1.5 %
e)	Gold/silver/platinum findings/mountings manufactured by mechanised process	2.5%

4.66 Endorsement on shipping Bill and Invoice.

During export of jewellery, shipping bill and invoice presented to customs authorities shall contain (i) description of item, (ii) its purity, (iii) weight of gold/ silver/ platinum content, (iv) wastage claimed thereon, (v) total weight of gold/ silver/ platinum content plus wastage claimed and its equivalent quantity in terms of 0.995/0.999 fineness for gold / silver and in terms of 0.9999 fineness for platinum and its value, (vi) FOB value of exports and value addition achieved. If purity of gold/silver/platinum used is same in respect of all or some of items made out from each of these metals for export, (vii) exporter may give total weight of gold/silver/platinum and other details of such similar items which are of same purity. In case of studded items, shipping bill shall also contain description, weight and value of precious/ semi-precious stones/ diamonds/ pearls used in manufacture and weight/ value of any other precious metal used for alloying gold/silver.

4.67 **Conditions of Exports**

*Exports **shall** be allowed by customs authorities provided endorsement made on shipping bill and invoice are correct and value addition achieved is not below minimum prescribed in FTP.*

4.68 Proof of Exports

(a) *Exporter has to furnish the proof of exports, wherever required for export of gold / silver / platinum jewellery and articles thereof, by furnishing following documents: (i) E.P copy of the shipping bill; (ii) Customs attested invoice; (iii) Bank certificate/e-BRC of realisation in Appendix 2U.*

.....

(d) *Instructions issued by Customs Department in this regard should be followed mutatis mutandis.*

4.81 Export against supply by Nominated Agencies

Exporter may obtain gold/silver/ platinum on following basis:

- (i) *Replenishment basis after completion of exports;*
- (ii) *Outright purchase basis in advance;*
- (iii) *Loan basis.*

4.82 of HBoP: **Replenishment Basis**

(a) *Exporter may apply to Nominated Agency / Status Holder having Nominated Agency Certificate for booking of precious metal gold/silver/platinum. Quantity of precious metal booked with nominated agency shall be equivalent to precious metal content in the export product and admissible wastage.*

(b) *Applicant shall at the time of booking deposit an earnest money for a minimum amount of 20% of notional price of precious metal, which shall be adjusted at actual sale.*

(c) *Exporter may also export jewellery on a 'notional rate' based on certificate provided by Bank. Exporter must fix price within credit terms allowed to buyer and realise proceeds within the due date of the credit terms or 180 days, whichever is earlier. Exporter exporting on a notional basis under Replenishment Scheme must book the same quantity of gold with Nominated Agency on same rate that he may have booked with buyer. Nominated agencies shall purchase precious metal on behalf of exporter at the rate so fixed and thereafter issue a purchase certificate bearing a serial*

number to exporter indicating quantity of gold/ silver/platinum and CIF value, in dollars including the Rupee equivalent. Price shall be actual price at which gold/silver/platinum is purchased by nominated agencies plus permitted service charges levied by nominated agencies shall be included with the price of gold/ silver/ platinum for value addition. Duplicate and triplicate copies of exporter's application together with copies of purchase certificate for exporter shall be sent by nominated agencies to concerned Custom House as well as to the negotiating bank who will confirm realization at which gold has been purchased. Exporter exporting under notional rate will get replenishment only after proceeds are realised.

(d) Exports shall be effected within a period of 120 days from date of booking and drawal of precious metal shall be completed within a period of 150 days from date of booking or within 30 days from date of export whichever is later."

15. Relevant Circulars are:

- a) Customs Circular No. 27/2016 dt.10.06.2016: Nominated agency to take EP copy of shipping bill and monitor export realisation.
- b) DGFT Policy Circular No. 28/2019 dated 27.09.2019: Clarifying cost of input to be that of duty free gold.
- c) Office Memorandum DGEP/G&J/06/2017/904 of September 2019: Interpretation of DGFT is final regarding FTP.
- d) Clarification dated 13.11.2020 of DGFT that duty free gold refers to the gold given by nominated agency to exporter.
- e) Clarification DGEP/G&J/06/2017/1344 dt.03.02.2020 about finalisation of Bonds under Notification 57/2000 –Customs dated 20.05.2020- reg, Wherein it was made clear that even in case of non –achievement of target value, the duty has to be sought pro-rata, from nominated agency while cancelling bonds.

16. Assailing the Impugned Order, the Ld. Counsel(s) for Appellant BL/JR/DIL submitted as under:

- 16.1. M/s BL/JR had exported jewellery out of domestic stock and was replenished inputs, i.e., gold, by the Nominated Agency - DIL, who is designated to import gold for replenishment to exporters. The exports under replenishment is subject to meeting minimum value addition norms (Supra) and all endorsements including value addition, etc. are required to be checked by customs officer before allowing such exports. The power to check these endorsements at the time of exports, in terms of Para 4.66 and 4.67 of HBP, has been given to the customs officer allowing such exports. In the present case, after verification, there have been

made endorsements on all invoices and shipping bills by the customs officers allowing exports/ let export orders in terms of Section 50, 51 of Customs Act 1962.

16.2. There are two schemes of Export Promotion given under Para 4.34 of Foreign Trade Policy 2015-20, notified by Director General Foreign Trade under the Foreign Trade & Development Regulations Act 1992. Such two such schemes are called 'Advance Procurement' and 'Replenishment scheme'. As per the schemes, exporter of jewellery may obtain gold as input for export of product from Nominated agency in advance i.e., 'Advance Procurement Scheme' or as replenishment, post the exports i.e., 'Replenishment Scheme', in accordance with the procedure specified in Para 4.82 of HBP. Also as per Para 4.34(ii), such exports (under replenishment) would be subject to prescribed Value Addition. Further, FTP Para 4.34 only specifies the schemes and the procedure for the same is provided in Hand Book of Procedure (HBP) which is required to be followed and for replenishment from Nominated Agencies, procedure is provided in Para 4.82 of the HBP.

16.3. Para 4.38 of FTP stipulates formula/method for calculation of Value Addition i.e. $(A-B)/B * 100$, where "A" is FOB value of the export realised/FOR value of supply received and "B" is Value of inputs (including domestically procured) such as gold / silver / platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplier. Hence Para 4.34 of FTP needs to be read with Para 4.82 of the HBP. Where it is clearly stated in Para 4.82(c) as below:-

"Price shall be actual price at which gold/silver/platinum is purchased by nominated agencies plus permitted service charges levied by nominated agencies shall be included with the price of gold/ silver/ platinum for value addition."

16.4. The formula is a generic formula for advance as well as replenishment, whereas method of calculation is clarified in 4.82(c) for Replenishment scheme, does not leave any ambiguity regarding which price to consider for calculating 'value of inputs'.

16.5. That the value addition in export of jewellery was always to be assessed as per Para 4.38 of FTP 2015-20 (subject to minimum value addition as prescribed in Para 4.61 of HBP 2015-20) read with Para

4.82(c) of HBP 2015-2020 (i.e., Price should be actual price at which gold/silver/platinum was purchased by the nominated agencies plus permitted service charges levied by nominated agencies, should be included with the price of gold/silver/platinum for value addition). The clear provision of procedure laid in HBP, does not warrant any different view other than literal interpretation. The domestic gold price or domestic gold prices less excise duty borne, would always include 'customs duty' as well as value added taxes. In the relevant times, the customs duty was 10% and value added tax was 1%, further, not all gold was subject to excise duty. Thereby, value addition calculation method adopted by Adjudicating Authority in impugned order under challenge, that value would always include customs duty and as well VAT, leading to export of taxes, is wholly misconceived. Also such method of calculation as laid down by Adjudicating Authority is in conflict with the objective as laid down in Para 4.00 of FTP and is also in absolute contravention with procedure laid down in Para 4.82(c) of HBP.

- 16.6. In line with above, **the DGFT** vide Policy Circular No. 28/2019 dated 27.09.2019, **has clarified** that the Value of Inputs or "B" in the relevant Para, the same is reproduced as under:-

"It is clarified that for the purpose of 'value addition', inputs in 'B' in Para 4.38 mean duty free (either in advance or replenishment basis) gold/silver/platinum content in the export product plus the admissible wastage."

- 16.7. It has also been submitted that Para 4.00 of FTP dealing with objective of scheme lays down that the schemes are for import of duty free inputs as well as replenishment. Thereby word 'duty free' referred above is for customs duty free input i.e. duty free gold imported by nominated agency.
- 16.8. The Ld. Counsel laid special emphasis on the communication dt. September, 2019 of Additional Director CBEC (now CBIC) wherein it is stated that the DGFT is the final authority for policy clarification. Hence DIL had requested the DGFT to issue clarification regarding Value Addition. Only after this communication the DGFT issued the above referred Policy Circular. It does not hold in the mouth of the Adjudicating authority or DRI to go beyond the stand of DGEP, i.e. the competent officer of CBIC/board.
- 16.9. The Ld. Counsel also drew attention of this tribunal to the email dated 13.11.2020 sent by the DGFT to DIL, clarifying that "Duty Free" in

Policy Circular 28 dated 27.09.2019 means "inputs imported duty free either on advance or on replenishment basis".

16.10. It was further argued that as per Para 2.57 (supra) of the FTP, it is the DGFT, and not DRI, the final authority on interpretation matters relating to FTP.

16.11. It was further submitted that the Customs authorities had duly verified the export goods as well as export documents i.e. shipping bill, export invoice and the certificate which was issued by the Govt. appointed Jewellery Valuer (as jewellery being fully mechanised) and the contents as mandated under the Section 50 & 51 of the Customs Act, including description of goods, value addition etc. The endorsements of Customs as prescribed under Para 4.67 of HBP i.e., checking export promotion copies of shipping bills and invoices was also verified by the nominated agency before the release of gold under the replenishment scheme. Section 50 & 51 of the Customs Act are reproduced hereunder:

"50. Entry of goods for exportation.—

(1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

51. Clearance of goods for exportation.—Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation."

Thus, the assessment for the purpose of exports under the export promotion scheme was done by the proper officer of customs and not self assessed. Such orders of assessment (appealable) have not been challenged by department in appeal. Thus the said assessment orders have attained finality and cannot be cancelled or modified under colourable exercise of power by resorting to section 28(4) of the Act. It has been held by Hon'ble Supreme Court in the case of ITC, that unless the assessments are challenged, no consequential benefit or demand can be raised. Further in the facts and circumstances the condition precedent u/s 28(4) are not available to revenue like misrepresentation, fraud etc.

16.12. Further urges - that the exporter is required to mandatorily give all details and the customs officer/proper officer is duty bound to check the particulars before giving the let export order. In the present case every

export/shipping bill has been checked with the goods by a custom appointed-govt. approved valuer in the export shed, and on being satisfied, the let export order was given by the Superintendent and/or Assistant commissioner (the proper officer). The whole case of DRI is that such valuers gave statement u/s 108 that they never certified the goods to be 'fully mechanised' in spite of them endorsing after verification, as "fully mechanised" in the certificate given by them. The cross examinations of valuers as well superintendents and ACs were sought, but not provided. Thus, relying on such statements of valuers is bad u/s 138B.

- 16.13. It is further submitted that the Adjudicating Authority has misguided himself in the impugned order, about differentiation between **mechanisation** and **automation**. The Job Worker M/s Ghanshyam Dass Jewellers has explained the process which includes use of machines/machine tools at all the stages of manufacture. Have categorically stated in Hindi during cross examination – 'Pura Machine Se'
- 16.14. That the Appellant had sought Cross Examination of all the persons whose statements were relied upon by the Department including the Customs Officers and Customs Valuers. The Adjudicating Authority had sent multiple communications to custom valuers who failed to appear on flimsy reasons. Thus there was provided Cross Examination only of the Appellant's Job Worker – M/s Ghanshyam Das Jewellers' proprietor Mr. Harish Aggarwal. The Ld. Counsel also drew our attention to section 138B of Customs Act, which states that the statement are admissible in evidence (acquire relevance), only when they are, tested by cross-examination. Section 138B of Indian Evidence Act is reproduced here under:

"138B. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, –

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having

regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

16.15. Customs Notification No. 57/2000 is issued u/s 25 of Customs Act, which provides outright exemption of customs duty for import of gold, silver and platinum imported under specified schemes by the Nominated agency (DIL in the present case). The Notification lays down in the second proviso - the only situation where duty can be demanded after import of gold cleared by Nominated Agency, is that gold released to exporter under advance procurement, is not exported. Thus, the DRI erroneously issued show cause u/s 28(4) for alleged violation of Notification 57/2000-Cus, without there being any shortfall in export, in comparison to gold released for manufacturing, which in present case is absent. Further reference has been made to Para 4.41 of FTP, which is reference to Nominated agency, wherein FTP and HBP prescribes the procedure of monitoring the Nominated agencies under Para 4.94 of HBP, under jurisdiction of DGFT.

16.16. Further submissions were made in relation to the adjudication Order being *ab initio* void in terms of second proviso of Section 28(9) of the customs Act 1962. The SCN u/s 28(4) was issued on 31.08.2018 and ought to have been adjudicated, maximum in one year, where no extension has been granted. The Appellants and Respondents both have relied upon the process of extension through notification by DG DRI. In the present case, there is no notification or any specific extension brought on record even by DRI during adjudication and contesting such appeal in case of BL. The petitioner has relied on judgement passed by Hon'ble Delhi High Court in Swatch Group India case, where SCNs adjudicated, have been quashed.

Reliance has been placed on Ruling in Gautam Spinners Vs. Commissioner Of Customs (Import), New Delhi & Anr.

16.17. The Ld. Counsel for Appellant M/s DIL submitted that DIL had imported gold under bond as per exemption Notification No. 57/2000 dt.08.05.2000, with only condition to verify – exporter have exported jewellery having gold content of equivalent quantity. DIL was only liable to account for the "quantity" imported which has been fully discharged by submitting proof of exports for the full quantity imported, and the bonds

have been cancelled by the Customs after verifying the proof of exports submitted, in compliance to the provisions of the FTP. There is no whisper either in SCN or in Impugned Order(s) about bonds already cancelled in favour of DIL.

17. The Adjudicating Authority has erred in holding that the Appellants M/s BL/JR has wrongfully claimed replenishment and that they have done mis-declaration qua the manufacturing process as "Fully Mechanised" and Value Addition at "2.05%". The Adjudicating Authority has erred in holding that the Appellant M/s BL/JR should have achieved minimum Value Addition of "3.5 %", the process being semi mechanised".

18. That DIL has stopped the replenishment of goods to M/s BL (for two Shipping Bills), which may be found to be incorrect, due to present proceedings.

19. The Appellants M/s BL/JR have provided a certificate from a Chartered Engineer, to prove that the manufacturing process as detailed by the Job worker – M/s Ghanshyamdas Jewellers, is "Fully Mechanised", which has been mechanically rejected by the Adjudicating Authority, holding it to be incomplete and inadequate.

20. The adjudicating authority has held that the process of manufacture was not "Fully Mechanised" and was instead "semi-mechanized". The Adjudicating authority has misconceived between **mechanised and automation**. Adjudicating Authority has simply accepted the views of the investigating agency, that the process involving movement of material from one machine to another by human intervention, makes the process semi-mechanised.

21. Further urges that the Department has not adduced even a single evidence to prove that the manufacturing process was not fully mechanized, and instead are relying on the statement of job worker, recorded u/s 108 of the Customs Act, 1962, who has submitted (and not challenged by the Department, during Cross Examination), that the process is fully mechanized and "Semi Mechanised" term was used by the Department while recording the statement in English on their own accord. The Adjudicating authority failed to exercise its discretion in a judicious manner.

22. It is a known fact that handmade jewellery is very expensive due to high labour charges (Rs.60 to 150 per gram) for the hard work and time taken by the artisans. Comparatively, making charges of Rs.5/gram and the quantity of

gold jewellery made in one day by the mechanised process, justifies and supports the declaration of the Appellants M/s BL/JR that it was fully mechanized. Furthermore, any observation on reasonableness of the making charges, is beyond the jurisdiction of the Customs Law. It is impossible to make large quantity of gold kadas without machines in a short time span of 2-3 days, and the Adjudicating Authority has not disputed the submission that the job worker used to manufacture the gold Kadas in one or two days. It further supports the contentions of the Appellant - M/s BL/JR. For example- Appellant BL sent 26 kg of gold plus 2 kg of alloy (approx), on 28.09.2016 vide challan No. 8 and received 28 kg of jewellery on 30.09.16.

23. Even the averment of Revenue- the order of the foreign buyer M/s M.N. Khan Jewellers (FZE), Sharjah was for "handcrafted plain gold jewellery" is incorrect. After perusal of the Purchase Order, it is evident that the request was for not only "handcrafted plain gold jewellery", but for "Indian Plain/Studded Gold/Diamond Jewellery handcrafted plain/ meena with KDM soldering". Further the purchase order is also subject to orally agreed variation, as mentioned in clause 8 of purchase order. Further, if the Appellant had sent goods not meeting the requirement of the buyer, it would have not been accepted at the very first instance, seeing the description on the documents. However this is not the case in the present matter and even the payment has been realized, that too after the shipment has been exported, and cleared by the foreign buyer. The goods exported were Plain Gold Kadas which has not been disputed by the Department and the only dispute is about the manufacturing process, which has been clarified as above.

24. The Director General of Foreign Trade (DGFT) is the Authority to decide on its scheme and accordingly, it is imperative on the Customs to refer and act according to the DGFT, and not to make rule or their own methods. The DGFT has given the formula for calculation of the Value Addition in Para 4.61 of the HBP and also given the values to be taken in the said formula, further in present case nominated agency approached DGFT for clarification regarding input cost, and DGFT clarified the same as – duty free value. The Adjudicating Authority has used his logic, over and above such clarification and also disregarded the DGEP office memorandum, mandating that DGFT clarification to be binding. For any interpretation issue, DGFT is the final authority as per clause 2.57 of FTP.

25. At the very first instance the Department should have approached the DGFT to seek clarification on the method of calculation of Value Addition and the values to be taken thereunder, however it failed to do so. Even the Adjudicating Authority did not consider the available clarification and instead arbitrarily evolved its own process for calculation of Value Addition.

26. The Adjudicating Authority has erred by disregarding the clarification issued by the DGFT vide Policy Circular, and passed the impugned order, with a new calculation/method, not known to law. Accordingly, prays for allowing the Appeals.

27. Opposing the Appeals, learned Special Counsel for Revenue with respect to the Appeals of BL & JR, relies on the allegations in the SCN and the findings in the Impugned Order. He further urges that the core issue is whether customs duty leviable on 1426 kgs of gold imported by DIL and supplied to BL & 800 kgs gold imported and supplied to JR, under the replenishment scheme has been rightly demanded from DIL, for the alleged contraventions of the provisions of Customs Notification No.57/2000. This flows from the principle allegation that BL/JR had fraudulently obtained/purchased duty-free gold bars from DIL against export of gold kadas, by resorting to mis-declaration of export goods, in quantum and/or value.

27.1. Adjudicating Authority has upheld all the allegations made in the SCN but has revised the calculation of arriving at the value addition. As per the SCN, the value addition was worked out at '-11.82%' on provisional export invoice and '-14.44%' on final export invoice/price. Adjudicating Authority has reworked the valuation and arrived at '-6.25%' on final FOB prices as against the value addition claimed by the exporters @ 2.05%.

27.2. Two key issues having a bearing on the merits of the Appeals are:

- i) Whether or not the subject 'kadas' were manufactured by a 'fully mechanized' process as declared by BL/JR in the shipping bills.
- ii) Whether or not the claim made by BL/JR that the value addition was "2.05%" of the export FOB value, is correct?

27.3. The preliminary ground urged in the Appeal memorandum is that M/s BL/JR was not allowed to peruse the original documents and the case file. Para 5.1.2 & 5.1.3 of the OIO deal with the objection raised by BL/JR relating to providing of certain documents including non-relied upon documents (RUDs). The Adjudicating Authority has rightly dismissed the

objections by pointing out that BL/JR had already received the documents not relied upon and copies of all RUDs were provided. In these circumstances, there was no need to allow examination of the case file of the department. Since copies of all RUDs were furnished to BL/JR and the OIO has not relied upon any material other than the same, the argument that there has been non-observance of principles of natural justice is without any substance whatsoever.

28. The second ground relates to request for examination/cross-examination of some persons including co-noticees like valuers and departmental officers, who had allowed the subject export clearances. The Appellant gave the following list of persons:

- 1) Mr. Harish Chand Agarwal, Proprietor of Ghanshyamdas Jewellery;
- 2) Mr. Nirakar Chand, CEO – DIL;
- 3) Mr. Satyanarayana Sharma, Government Approved Jewellery Valuer;
- 4) Mr. P. Bhawarilal Jain, Government Approved Jewellery Valuer;
- 5) Mr. B. Ramkumar Jain, Government Approved Jewellery Valuer;
- 6) Mr. Mohammed Nayeemuddin, Managing Partner – Viva Custom Cargo Clearing Agent.
- 7) All the Custom Superintendent who gave out of charge of exports.
- 8) All the Assistant Commissioner handling exports shed.

29. The Adjudicating Authority correctly held that out of the aforementioned, four persons, viz., (i) Mr. Nirakar Chand, (ii) Mr. P. Bhawarilal Jain, (iii) Mr. Satyanarayana Sharma & (iv) Mr. B. Ramkumar Jain are co-noticees. Accordingly, as per judicial precedents, examination/cross-examination of co-noticees cannot be granted and it does not result in violation of principles of natural justice. Reliance was placed on the ruling in NS Mahesh vs CC, Cochin [2016 (331) ELT 402 (Ker.)]. It was further observed by the Adjudicating Authority that Mr. Nirakar Chand submitted letter dt.31.01.2020, that his statement dt.03.05.2017 before DRI was given in reply to specific questions. Further, stated that it was merely a statement of facts and general procedure being followed by DIL as nominated agency. Further DIL sought exemption from appearing from cross-examination as he was a co-noticee. The Adjudicating Authority placed reliance on the ruling of Hon'ble Bombay High Court in Patel Engineering Ltd vs UOI [2014 (307) ELT 862], wherein it was held that the denial of cross-examination does not amount to violation of principles of natural justice in every case, instead it depends on particular facts and circumstances. Further, the cross-examination of three Government approved jewellery valuers was also denied on the ground that they are co-noticees and their statement is narration of facts about certificates issued by

them. The Adjudicating Authority further observed that the three jewellery valuers in their respective statements have averred, inter alia, that – the certificate with respect to wastage, is as per the wastage stated in the export documents and he had not examined the wastage with any authentic method. Further, he had copied down the wastage as 0.896% as mentioned in the export document. As regards method of manufacture, they had stated that they had not seen the process of manufacture and only the manufacturer or the job worker could precisely tell whether the subject gold jewellery was manufactured with fully mechanized process or not. Without intervention of artisans, it was not possible to manufacture gold jewellery. As it was stated in the export invoices “fully mechanized”, the same was copied by them in their report. Further, they were not authorized to issue certificate, certifying the method of manufacture and they were authorized to certify only the purity and content of gold. They also requested to consider the certificate only to the extent of purity of gold and not as regards wastage and process of manufacture, as they have not been authorized to certify the same. Further, they stated that deposition holds good with respect to all certificates issued by them to BL/JR. However, on insistence by BL/JR, cross-examination was granted of the three jewellery valuers. Mr. P. Bhawarilal Jain instead of appearing for cross-examination submitted letter dt.10.02.2020 and averred that he will submit written letter in lieu of attending Hearing without mentioning any reason for not attending scheduled Hearing on 11.02.2020.

30. Cross-examination was again fixed on 11.03.2020, Mr. P. Bhawarilal Jain, vide letter dt.15.03.2020, denied the contents of the statement recorded during the investigation, stating that it was prepared by customs officers without any supporting evidence. Further, submitted that there is no document relied in the proceedings, which had been issued by him, for cross-examining him. Further, stated that being of old age and unwell, he will not be able to attend Hearing in person and accordingly, requested to waive the cross-examination. Similarly, Mr. B. Ramkumar Jain also denied the contents of the statement as having been prepared without any supporting evidence by the customs officers and requested for waiver to appear. Mr. Satyanarayana Sharma, by letter dt.02.03.2020, submitted that he being a co-noticee and had already filed detailed reply, it may be clarified whether his cross-examination was acceptable or not and had further, prayed for travelling expenses. The Appellant – BL/JR had offered to arrange for transportation expenses of the witnesses. Further, in view of the COVID pandemic, it appeared to the Adjudicating Authority that

insistence of witnesses is not possible due to the lockdown imposed w.e.f. 24.03.2020, which was further extended twice. Subsequently, when the interstate movement was allowed, cross-examination was again fixed on 30.06.2020. Further, Mr. Satyanarayana Sharma informed by letter that he is unable to appear being suffering from diabetes and hypertension and other two valuers also did not appear without information. Appellant Mr. Rahul Gupta appeared with his Consultant Mr. Sanjeev Kumar, for cross-examination on 30.06.2020.

31. The cross of the CHA, who handled the exports, could not be held since the communication sent fixing the dates 4 times, were returned as undelivered. As for the cross of concerned officers, who customs-cleared the export consignments, and the Investigating Officer, the Adjudicating Authority did not see any justification to accede to the request citing support from case law. Further, no statements were recorded from them and nowhere, they had averred about the aspects of value addition or process of manufacture.

32. The cross-examination of Mr. Harish Chand Agarwal (job worker) was held on 11.03.2020 wherein he made it clear that no statement in English was given by him, nor he stated manufacturing process as 'semi mechanised'. He had stated- "pura machine se", i.e. fully mechanised. The Adjudicating Authority has held that wherever the witnesses co-operated by way of accepting the request to appear for cross, he had conducted the same. The Adjudicating Authority has relied upon several pronouncements concerning denial of cross of witnesses.

33. Further urges, the Adjudicating Authority has dealt with each request fairly and has met them wherever found feasible, allowing also cross-examination through virtual mode. Thus, the argument of violation of principles of natural justice on this account has no merit.

34. The contention of the Appellants – BL/JR that they will file their final reply only after completion of cross-examination of all the witnesses, as proposed, was rejected by the Adjudicating Authority. Further, regarding the admissibility of statement of Mr. Rahul Gupta and Mr. Ashish Gupta, it is not disputed that they had not retracted their statements and also they have not stated under duress or coercion. Accordingly, their statements are fully reliable.

35. Further, the contention of BL/JR that process of manufacture of kadas was fully mechanized is erroneous and not correct. Accordingly, prays for dismissing the Appeals.

36. Heard both sides and perused the records.

37. Having considered the rival contentions and perusal of the records, we record our findings as follows.

37.1. The Appellants have also relied on the judgment of Canon India in their Appeal memorandum in support of the contention that the SCN issued by the DRI is without jurisdiction (not maintainable at all), in view of the said judgment. However, in the course of final Hearing, they stated that they do not wish to press this argument and preferred to advance arguments on merit. This was also not contested by the Revenue and in fact, Revenue went on to argue the case and also submitted their final submissions on 26.09.2023. Since either side is not pressing for reliance on the judgment of Hon'ble Supreme Court in Canon India, we do not take it into account for the purpose of deciding the issue.

37.2. We find that in the facts of the present case, gold has been supplied by DIL by way of replenishment and there is no allegation that matching quantum of gold has not been exported as required under Notification No. 57/2000-Cus. In the said Notification, in the second proviso, it clearly provides that Nominated Agency supplying gold to the exporter is liable only for difference (shortage) between the quantity issued and that contained in the exported jewellery or articles. We further find that the value addition norm was required to be checked by the proper officer of customs on presentation of goods with the export documents. Admittedly, all the shipping bills along with the export invoices were approved by the proper officer of customs on being satisfied as to the declarations and requirements. Thus, we find that no case of violation of the conditions of Notification No. 57/2000-Cus is made out in the facts and circumstances. Thus, we hold that the Appellant – DIL has not violated the provisions of Customs Act read with Notification No. 57/2000-Cus.

37.3. So far the issue regarding manufacturing processes is concerned, we find that the job worker has categorically stated that he has used machines and/or machine tools at each stage of the manufacturing process. Firstly, he has used electric furnace to melt the metal that is

gold with the alloy. Thereafter, the alloyed gold was fed into rolling machine and the said machine gives flat sheets (patty) of about 1 inch width and thickness, which varies on the size of the Karra. Thereafter, the gold sheet so obtained is fed into the design printing machine and embossed sheets are obtained. Thereafter, cutting as per the required length for making the kada of particular size, is done by Cutter and further, chiselling is done by mechanised handheld Chiseller device. Thereafter, polishing is done by putting the Kadas in the polishing drum/machine. The aforementioned process, in trade parlance, means fully mechanised. The Adjudicating Authority has misconceived the fully mechanised process with automation. Mechanisation and automation are quite different and not the same thing. Manufacturing with the use of machines means mechanised in trade parlance. Whereas, where manufacturing process or steps by different machines is connected by way of automation, reducing human interference, may be aided by artificial intelligence, amounts to automation. Accordingly, from the facts on record and the evidence recorded, it is evident that the jewellery in question which have been exported, was manufactured by the said job worker by fully mechanised process. The Govt. approved jewellery valuers, who are experts, have also certified so. Further, the said valuers have not stood by their statements recorded during investigation. The Chartered Engineer has also certified the process as fully mechanized. Therefore, the value addition here would be 2% and not 3.5% as held in OIO.

- 37.4. Now we take up the issue of value addition. We find that value of input in the formula, as aforementioned, was required to be taken as the value of imported gold (without adding any duty) plus the service charges levied by the Nominated agency. Para 4.82 of HBP deals with the procedure in case of export on replenishment basis. The exporter is required to apply to the Nominated agency for booking of precious metal/gold/silver/platinum. Quantity of precious metal booked by the Nominated agency shall be equivalent to precious metal content in the export product, plus admissible wastage. The Applicants/exporter may, as per clause (c), export jewellery on a notional rate, based on certificate provided by banks/Nominated agency. For the purpose of valuation the price shall be actual price at which gold/silver is purchased by the Nominated agency plus permitted service charges levied by the agency. We find that in the adjudication order, the authority has wrongly taken

the domestic price (price charged by refiners/suppliers in DTA) and has adjusted the same with the excise duty to arrive at duty free price of gold/silver. Adoption of such basis is contrary to the provisions in the foreign trade policy, read with the HBP, read with the clarifications given by the DGFT as well as the DGEP, referred supra. Accordingly, we find that the basis adopted by the Adjudicating Authority, for calculation of value addition is wholly erroneous and palpably wrong.

37.5. Therefore, the whole crux of the issue is whether the value addition norm as adopted by the Revenue was correct or as adopted by the Appellants based on the extant FTP and clarifications issued in this regard. As already discussed and elaborated upon in view of the extent policy guidelines as well as clarifications, it is obvious that the interpretation of DGFT Authority would prevail over Customs Authority, which has also been admitted by DGEP in their circular (quoted supra). Therefore, if that norm is followed instead of the calculation method adopted by the Revenue, the requirement of Notification No. 57/2000 is met, in as much as, the conditions for duty-free imports stand fulfilled and therefore, there is no short levy. In this regard, it had already been discussed in foregoing Paras that having regards to the statements and factual position narrated and arguments made by the Appellants, the process of manufacturing of jewellery is 'fully mechanised' and therefore, the value addition norm would also be 2% and not 3.5% as alleged by the department in the SCN and upheld by the Adjudicating Authority.

37.6. As regards submission of the Revenue that there is no evidential value of email clarification dt.13.11.2020 produced by the Appellant on 03.10.2023 i.e., after issue of OIO in relation to clarification with regard to Policy Circular No. 28 dt.27.09.2019, since it does not bear any signature or it is not issued under the letter head of DGFT and this clarification was also not relied upon in the Appeal memorandum. In this regard, it is noticed that mail has come from Mr. Arun Kumar of Policy Cell-4, Head Quarters from Email ID "policy4-dgft@gov.in" and it says that same has been issued with the approval of DGFT. It is also noticed that this mail has come in response to DIL's letter dt.09.10.2020. Since it is an official mail, it cannot be held as having no authority to clarify as indicated in the said mail. If Revenue had any doubt about genuineness of this mail, they could have cross-checked from the DGFT as regard bonafide of this mail. It is obvious that the original Circular dt.27.09.2019 also, in Para 3, has clarified that for the purpose of value addition, inputs

in 'B' in Para 4.38 means 'the duty-free' (either on advance or replenishment basis). Therefore, it would be obvious that the term 'duty-free' used here in conjunction with either on advance or replenishment basis, would obviously mean imported inputs or in other words, what has been clarified in email is inputs imported duty free. Therefore, the objection taken by the Revenue on this ground does not hold any substance.

37.7. Further, we have held that the process of manufacture is fully mechanised, we find that the wastage allowable was 0.9%. Further, the required value addition is 2% as per the table in Para 4.61 & 4.62 in the Handbook of procedures. Thus, we find that the whole allegation by revenue of not achieving minimum value addition is misconceived and bad.

37.8. The Revenue has also argued that they – BL/JR had declared making charges as value addition, which is not acceptable as per FTP. Whereas, in fact, as per Para 4.82(c) of HBP, the making charges do represent value addition under FTP because the scheme is designed to import gold for export of jewellery at some rate by making value addition of making charges and margin. Appellants have also refuted that they were declaring higher values to customs and reducing the same after export, and not informing the same to the customs. Revenue has submitted that exporters were neither declaring value at the time of export nor at the time of pricing. On the grounds that the Appellant - DIL should have made independent verification of value addition and just not rely on the customs attested invoice. The Appellant - DIL has stated that the customs attested documents give exporter the entitlement for quantity of duty-free gold and the Appellants were bound by it.

37.9. We further find that such verification, as regards the percentage of wastage declared and value addition etc., was to be done by the customs authorities at the time of export, especially, when it is declared to be an export under replenishment scheme. That is, before giving the let export order. There is no allegation in the SCN that the customs authorities – proper officer did not perform their duty diligently or have abetted with the exporter. Further, all duly endorsed documents were submitted by DIL to jurisdictional Customs officer for final assessment and closure of the bond and the said bonds were closed without raising any doubt or query based on endorsement of proper officer of customs, at the time of

export of gold jewellery. Thus, the whole allegation is not substantiated and has got no legs to stand.

37.10. We further find that there is also no allegation that the Appellant have exported gold jewellery using less quantum of gold, than declared or made by some other metal other than gold. Also, there is no allegation regarding purity of gold as declared. In view of the aforementioned facts and observations, we hold that the provisions of section 113(i) for confiscation are not attracted, there being no case of any misdeclaration.

37.11. So far the Appellant - DIL is concerned, as the Nominated agency, in terms of paragraph 4.78 of FTP, they were required to pay the duty on the precious metal imported, if it is proved to have been not exported in accordance with provisions under the scheme. Under the admitted facts, DIL have supplied gold under the replenishment scheme, and after the verification of the export promotion documents/shipping bill etc., have released the gold only after confirming realisation of the export proceeds by the exporter - duly certified by the bank. Further, under Notification No. 57/2000, duty can be demanded from the Nominated agency only in case the gold imported duty-free under bond is not re-exported under the export promotion scheme. We find that there is no violation of the said provisions of the notification read with the relevant circular issued. We hold that there is no case of any violation against DIL under the Customs act, read with the notification. We further take notice of the fact that the bonds given by the Nominated agency - DIL to the customs, have been duly discharged or closed by the proper officer after due verification of relevant documents under the scheme.

37.12. So far the appeal of the approved jewellery valuer - Mr. Satyanarayana Sharma is concerned, we find that in view of aforementioned findings, the allegation against him would also not stand. It is evident that this Appellant has valued the gold jewellery under export, in the export shed in presence of the Customs officials. He has certified certain other parameters including weight and purity but that does not make him accomplice. No case of any suppression or collusion in the valuation report is made out. In this view of the matter, we allow the appeals of the jewellery valuer - Mr. Satyanarayana Sharma and set aside the penalties imposed on him.

37.13. Consequently, we hold that no penalties are imposable on any of the parties/Appellants. Accordingly, all the penalties imposed on all the Appellants are set aside.

37.14. The Appellants have also raised an objection on account of limitation for adjudication. According to the Appellants, the Order has been passed in violation of Sec 28(9) of the Customs Act 1962, which in the sense, mandates that SCN issued under Sec 28(4) must be adjudicated within one year from the date of notice, whereas, in the instant case, the notice was issued on 31.08.2018 but the Adjudication Order was passed only on 26.08.2020. They have also stated that while the Order refers to extension of time limit of one year by DGRI vide its letter dt.21.08.2019, the same has not been placed on records. The Revenue on the other hand, has said that SCN has been issued within the normal period but no arguments have been advanced regarding the adjudication of the same within the time limit prescribed under provisions of Sec 28(9) of the Customs Act. The Revenue has however put on record an Order dt.21.08.2019, whereby, in the case of SCN dt.31.08.2018, the approval for extension of one year as per first proviso to Sec 28(9) of Customs Act was recorded by the competent authority. Further produced a notification viz., 06/2019-CUS dt.27.02.2019, under sub-sec (8) of Sec 28 of Customs Act, whereby in respect of SCN dt.26.09.2018 of DIL was extended by further period of one year. The Appellants have relied on the judgment of *Gautam Spinners vs CC (Import)* [2023 (386) ELT 62 (Del)] to substantiate their claim that regardless of causative factors, the notice needs to be adjudicated within the statutory period. Be the case as may be, since the entire issue has been decided on merit itself, we keep the issue of limitation open without expressing any view on this aspect.

37.15. Further, as we have allowed the appeals on merits, we also leave the question of limitation open.

38. All appeals are allowed with consequential benefits, including entitlement to receive the balance quantity of gold, which has not been released by the Nominated agency – DIL to the Appellant/exporter M/s BL/JR under the replenishment scheme.

(Pronounced in the Open Court on 08.02.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)