

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1514/2007

COMMISSIONER OF CUSTOMS, MUMBAI

APPELLANT (S)

VERSUS

M/S R.B. JEWELLERY CORPORATION

RESPONDENT (S)

O R D E R

The respondent/assessee is a unit in Santacruz electronic Export Processing Zone (SEEPZ) and is engaged in the manufacturing of plain/studded/unstudded gold jewellery for export from the directly imported gold or from the gold procured from MMTC in terms of Notification No. 196/87-Cus. dated 05.05.1987 which was further amended by Notification No. 177/94-Cus. dated 21.10.1994. The said Notification *inter alia* graded percentage of gold wastage or loss depending on the value addition achieved, on the jeweller of the description specified therein, and provided that scrap, dust or sweepings may be forwarded to Government Mint by the importer for conversion into standard gold bars and return to the said Zone in accordance with the procedure specified by the Commissioner of Customs in this regard. Amongst other conditions, the said Notification required that the importer shall maintain a proper account of import, consumption and utilization of the goods and of exports made by him. Public Notice dated 28.07.1988 issued by the Commissioner in terms of the above notification required in the units in SEEPZ to maintain registers.

On 11.11.1995, acting on information that the Gem and Jewellery Unit I SEEPZ have been misusing the facility by showing excess manufacturing wastage or loss than permissible under the above mentioned Notification, causing shortage in physical stock, claiming it to be lying in the form of dust, the Officers of Preventive Commissionerate visited the premises of the said unit and verified the records from the period of inception of the unit and took the physical stock of gold followed by detailed investigation which resulted in the detection of the shortage of 25139 gms of gold, valued at Rs. 1,12,62,272/-. The unit was found to have not been maintaining the waste account registers as prescribed vide public notice dated 28.07.1988. During the investigation, the unit claimed that excess manufacturing wastage/loss takes place in the production of jewellery, and the same was available in the form of dust/slurry and gold was recoverable by refining the same and the claim of loss made at the time of expert was on approximation. Based upon the above facts, the show cause notice dated 13.11.1997 was issued. The said show cause notice stands confirmed by the Commissioner vide its order-in-Original dated 29.08.2001 confirming the duty of Rs. 81,65,147/-. Personal penalty of Rs. 11 lakhs upon the respondent was also imposed.

Aggrieved by the aforesaid order, the assessee preferred appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT). The said appeal has been allowed by the Tribunal recording the finding to the fact that the Revenue could not make out any case of collusion, willful and mis-statement or suppression

and, therefore, extended period of limitation was not applicable. Even on merits, the Tribunal followed its earlier decision in M.M.K.Jewellers vs. Commissioner of Customs, Mumbai [(156)ELT 722 (Tri-Mumbai)]. The same view has been upheld by this Court in Commissioner of Customs, Mumbai vs. M.M.K.Jewellers[2008(5) SCC 617].

Since the case is squarely covered by the aforesaid decision in favour of the assessee, this appeal is hereby dismissed.

.....J.  
[A.K. SIKRI]

.....J.  
[ROHINTON FALI NARIMAN]

NEW DELHI;  
SEPTEMBER 30, 2015

ITEM NO.103

COURT NO.14

SECTION III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1514/2007

COMMNR. OF CUSTOMS, MUMBAI

Appellant(s)

VERSUS

M/S R.B. JEWELLERY CORPN.

Respondent(s)

(with office report)

Date : 30/09/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. Yashank Adhyaru, Sr. Adv.  
Mr. Rupesh Kumar, Adv.  
Mr. A.K. Srivastava, Adv.  
Mr. Jitin Singhal, Adv.  
Mr. B. Krishna Prasad, Adv.  
Mr. Atulesh Kumar, Adv.

For Respondent(s) Mr. M.P. Devanath, Adv.  
Ms. L. Charanaya, Adv.  
Ms. Nupur Maheshwari, Adv.  
Mr. S. Vasudevan, Adv.  
Mr. Hemant Bajaj, Adv.  
Mr. Anandh K., Adv.  
Mr. Aditya Bhattacharya, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The Civil Appeal is dismissed in terms of the signed order.

Interlocutory Application(s), if any, pending is disposed of accordingly.

(Ashwani Thakur)  
COURT MASTER

(Renu Diwan)  
COURT MASTER