

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1514/2007

COMMISSIONER OF CUSTOMS, MUMBAI
PELLANT(S)

APP

VERSUS

M/S R.B. JEWELLERY CORPORATION
PONDENT(S)

RES

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 Co
mmissioner 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
Signature Not Verified

Digitally signed by
ASHWANI KUMAR
Date: 2015.10.06

exports made by him.
17:20:53 IST
Reason:

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 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 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

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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
RECORD OF PROCEEDINGS

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