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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/71/B/2021-RA

3571

: Date of Issue

01.09.2022

ORDER NO. 245/2022-CUS(WZ)/ASRA/MUMBAI DATED 29.09.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri. Vinod Kumar Dwarkadas Modi

Respondent : Commissioner of Customs, CSI, Mumbai.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1453/2020-21 dated 11.02.2021 (DOI : 17.02.2021; F.No. S/49-770/2019) passed by the Commissioner of Customs, (Appeals), Mumbai – III.

ORDER

This revision application has been filed by Shri Vinod Kumar Dwarkadas Modi (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-1453/2020-21 dated 11.02.2021 (DOI: 17.02.2021; F.No. S/49-770/2019) passed by the Commissioner of Customs, (Appeals), Mumbai – III.

2.1. Brief facts of the case are that the Customs Officers at CSI Airport, Mumbai intercepted the applicant on 12.11.2017, when he was about to board a Jet Airways Flight No. 9W 0076 / 12.11.2017 bound for Hong Kong. The applicant had cleared himself through the Immigration and Customs Desk at the Departure. On enquiry, the applicant admitted that he was carrying rough diamonds in his checked-in bags and that he did not have any documents to establish the source of the rough diamonds. Initially the diamonds were detained and on 15.11.2017 these were taken to the PCCCC Office at BKC for examination and valuation. The details of the diamonds as per the report submitted by the Government Approved Valuer are as given below at Table – 01. The said diamonds having total weight of 2593.62 carats and valued at Rs. 3,50,08,379/- (Rupees Three Crore, Fifty Lakhs, Eight Thousand, Three Hundred and Seventy-Nine Only) were subsequently seized on 05.04.2018 on the reasonable belief that the said diamonds were attempted to be smuggled out of India in contravention of the Customs Act, 1962 and were liable for confiscation under the Act.

TABLE – 01.

Sr. No.	Brown Envelope	Coloured	Nos. of plastic pouches	Weight in Carats.
1.	A		7	673.59
2.	B		7	619.85
3.	C		8	632.71
4.	D		8	667.47
	TOTAL		30	2593.62

2.2. In his statement recorded under Section 108 of the Customs Act, 1962, the applicant admitted the possession, carriage, non-declaration and recovery of the rough diamonds from him on 12.11.2017; that he did not have any legal / valid documents in his possession for the rough diamonds; that the four packets containing the diamonds had been given to him by a diamond broker to be delivered at Hong Kong; that he had carried the diamonds for a monetary consideration of 3% of the value of the rough diamonds; that his lodging at Hong Kong had been booked by the diamond broker.

3. After due process of the law, the Original Adjudicating Authority viz, Additional Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/30/2019-20 dated 30.04.2019 [(S/14-7-01/2018-19/Adjn) (SD/INT/AIU/318/2017 AP'B')] ordered for the absolute confiscation of the rough diamonds totally weighing 2593.62 carats and valued at Rs. 3,50,08,379/- (Rupees Three Crore Fifty Lakhs Eight Thousand Three Hundred Seventy Nine Only) under Section 113(d), (l) and (m) of the Customs Act, 1962 and imposed a personal penalty of Rs. 40,00,000/- (Rs Forty Lakhs Only) on the applicant under Section 114(i) and 114(ii) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the appellate authority viz Commissioner of Customs, (Appeals), Mumbai – III who vide Order in Appeal No. MUM-CUSTOM-PAX-APP-1453/2020-21 dated 11.02.2021 (DOI: 17.02.2021; F.No. S/49-770/2019) did not find it necessary to interfere with the order passed by the Original Adjudicating Authority and disposed of the appeal.

5. Aggrieved with the above order, the Applicant has filed this revision application, inter alia on the following grounds;

5.01. that the absolute confiscation of the rough diamonds was bad in law for these are freely importable and exportable goods and are not prohibited under Indian law.

5.02. that with regard to imposition of redemption fine, Section 125 of the Customs Act, 1962 states that in respect of prohibited goods, the proper officer may grant option to redeem the goods, however, in the case of non-prohibited goods, the officer has no choice but to grant an option to redeem the goods on payment of fine. Applicant has cited several case laws including case law of Yakub I. Yusuf vs. Commissioner of Customs, New Delhi [2003(161) ELT360 Tri-Delhi].

5.03. that the applicant has cited the following case laws and have stated that it may be appreciated that most of these judgements were given in the background of importation of gold, the import of which, unlike diamonds is regulated and that the case of the applicant which pertains to diamonds is on a much better footing,

- a. Shaik Jamal Basha vs. GOI [1997(91)ELT277(A.P),
- b. Neyveli Lignite Corporation Ltd vs. UOI [2009(242) ELT 487 (Mad)],
- c. Alfred Menezes vs. Commr of Customs, Mumbai [2009(236) ELT 587 Tri-Mumbai],
- d. Yakub Ibrahim Yusuf vs. Commr. Of Customs, Mumbai [2011 (263) ELT 685 (Tri-Mumbai),
- e. Mohini Bhatia vs. Commr. Of Customs Mumbai [1999 (106) ELT 485 (Tri-Mumbai)],
- f. Bhargav B. Patel vs. Commr. Of Customs, CST Mumbai [2015-TIOL-1951-CESTAT-MUM,
- g. Bombay High Court case of Shine Star Exports vs. UOI in WP no. 6821/2020.

5.04. that Gujarat High Court in the case of Commr. Of Customs vs. Pravin R. Ajudiya, 2019 SCC Online Guj 808 dated 08.05.2019 ordered for the release of the diamonds confiscated by the Customs Department after imposing fine; At para 9 of the said Order, it has been held '*when the respondent has succeeded before the*

Tribunal and rough diamonds are otherwise freely importable and are duty free, the court is of the view that a case of absolute stay of the order of the Tribunal has not been made out. However, to protect the interest of the revenue, the goods may be permitted to be released subject to certain conditions.'

5.05. that the impugned OIA was passed without application of mind with non-consideration / arbitrary and mechanical rejection of the submissions made by them.

5.06. that the non-possession of documents such as KPC, Shipping Bills etc in terms of Circular No. 53/2003-Cus dated 23.06.2003 and not declaring the goods to Customs Authorities as required under Section 77 of the Customs Act, 1962 read with Baggage Rules, 1998 and provisions of FEMA was a venial / technical breach which did not make the rough diamonds prohibited as held by the OAA and Appellate Authority in terms of Section 125 of the Customs Act, 1962. Also, the KPC endorsed by GJPEC at the time of importation was not considered by the OAA and Appellate Authority and its veracity had not been disputed; that no punishment can be imposed for "venial/technical breach" as held on various occasions by the Apex Court and High Court. (M/s. Hindustan Steel Vs. State of Orissa reported in 1978 (2) ELT (J159), M/s Novel Digital Electronics vs The Commissioner Customs (Imports) C.M.A. No. 327 of 2008); that this lapse by applicant had not caused any substantial prejudice to the Revenue Department for the reason that rough diamonds are freely exportable items which do not attract any customs duty.

5.07. that submission regarding the production of documents such as invoice, KP certificate, contract note with affidavit of seller, etc. showing licit acquisition of the rough diamonds had not been considered.

5.08. that value of Rs. 90,81,803/- mentioned in the invoice had not been considered.

5.09. that OIO had been passed in violation of the adjudication manual.

5.10. that when charges against the broker had not been proved then charges against the applicant were not sustainable.

5.11. that statement of the applicant was not voluntary and he had been intercepted at the check-in point itself and was compelled to cross immigration.

5.12. that the applicant has relied upon various case laws to buttress their contention that cross examination of the witnesses in the statement had not been allowed and OIA having been passed without considering their submission.

5.13. that the Order of the appellate authority had travelled beyond the SCN.

5.14. that the applicant has alleged that in the SCN for confiscation, Sections 113(d), (e), and (h) of the Customs Act, 1962 have been invoked, but in the OIO, Sections 113(d), (l) and (m) of the Customs Act, 1962 have been confirmed.

5.15. that the applicant has alleged that in the SCN for penalty, Sections 114(i) and 114(ii)

of the Customs Act, 1962 have been invoked, while in the OIO, penalty under Sections 114(i) and 114(iii) of the Customs Act, 1962 have been imposed.

Under the aforesaid circumstances, the applicant has prayed to set aside the impugned OIA, and to release the subject goods or pass any other order as deemed fit.

6.1. Personal hearing through the online video conferencing mode was scheduled for 09.02.2022. Shri Ritaj Kacker and Shri Sourav Kumar both Advocates appeared online on 09.02.2022 on behalf of the applicant and reiterated their submissions. They pointed out that

- (i). OIO has travelled beyond the SCN which is not permissible,
- (ii). Customs Valuation Rules were not properly applied,
- (iii). The invoice submitted by them has been rejected without verification; that along with invoice, KP certificate was also submitted,
- (iv). Invoice submitted by them represents correct value of the goods,
- (v). Rough diamonds are neither prohibited nor restricted goods, these are freely importable / exportable,
- (vi). In similar cases, Courts have allowed redemption with nominal R.F and penalty.

They requested one week's time to submit additional submission on the matter.

No one appeared on behalf of the respondent department.

6.2. The Advocates vide their email dated 16.02.2022 mainly reiterated their earlier submissions. They have cited case law viz, Neeta Prakash Modi vs. Commissioner of Customs (Preventive) [2012-TIOL-CESTAT-MUM] on the aspect of the documents such as invoice, KPC submitted during adjudication by the applicant are required to be considered. They have reiterated that in case of doubt, the department ought to have verified and carried out investigations to ascertain the genuineness of the documents, that rejection of the same was a violation of the principles of natural justice.

6.3. It was also submitted that the impugned goods were freely importable / exportable and did not come within the purview of prohibited goods. The impugned goods had been confiscated absolutely only for policy violation i.e. non-availability of KPC. The OAA had failed to appreciate that during the course of the adjudication requisite documents including KPC, invoice, etc. of the impugned goods had been submitted. The same had not been considered by the original adjudicating authority or by the appellate authority.

6.4. It was submitted that excessive penalty had been imposed by the OAA due to the non-consideration of the documents submitted during the adjudication even though there is hardly any violation on the part of the applicant. They prayed for the reduction in the penalty.

7. Government has gone through the facts of the case, OIA passed by Appellate Authority, submission made by the applicant, record of personal hearing, etc. The applicant had attempted to take out the rough diamonds without declaring the same to the Customs. When confronted at the point of departure, the applicant admitted that he was in possession of rough diamonds. Applicant had not produced any evidence of procuring the rough diamonds through proper legal channels nor had he produced the Kimberley Process Certificate (KPC) which is a requirement for carriage and transport of rough diamonds. The quantum of rough diamonds indicated that it was not bonafide baggage item which was allowed in terms of the Baggage Rules

8. 1. Applicant has submitted that absolute confiscation of the rough diamonds under Section 125 of the Customs Act is bad in law as rough diamonds are not prohibited goods and are freely importable and exportable and that non-production of KPC at the

time of detention of goods was only a venial/procedural lapse. Applicant has also submitted that in the case of non-prohibited goods, the adjudicating authority under Section 125 of the Customs Act has no choice but to grant an option to redeem the goods on payment of fine. After going through the relevant provisions of law, it is evident that rough diamonds are indeed freely importable/exportable. However, there is a requirement of a valid KPC accompanying the consignment. Since there was no valid KPC, this requirement/condition remained unfulfilled. This cannot be said to be only venial/procedural lapse. Nonfulfillment of a condition leads to prohibition getting attracted in such a case.

8.2. The applicant has contended that the Order of the appellate authority had travelled beyond the SCN as Sections of Customs Act invoked for confiscation and for imposition of penalty in the SCN are different than those used in the order. Government has examined this issue and it is noted that this averment of the applicant does not come to his rescue. In S Jamal v/s. Commr. Of Customs (AIR, Chennai [2014 (307) ELT 269 -Mad], the Hon'ble High Court, Madras held;

'14. In the present case, the show cause notice elaborately discussed the role played by the appellant. Therefore, merely because the show cause notice does not mention Section 112(b) but mentioned Section 112(a) of the Customs Act, would not vitiate the entire proceedings; more so when the ingredient found place in the show cause notice and non-mentioning of the specific clause of the Customs Act will not vitiate the details mentioned in the show cause notice in clear terms. Hence, considering the above factual position, we find no ground to entertain the Civil Miscellaneous Appeal. Accordingly, the appeal fails and same stands dismissed. ...'

Thus, once ingredients of offence committed by the applicant find place in the SCN, OIO, and Appellate Order, non-mentioning/wrong mentioning of specific clause of Customs Act would not vitiate the proceedings.

8.3. Applicant had submitted that he had been intercepted at check-in and not after immigration and that he had been forced to cross the immigration and that this issue had not been considered by the OAA. Government notes that the applicant had been given numerous opportunities at the investigation stage to come out with full and complete facts. However, the applicant chose not to avail of the same and had made himself unavailable. The Government therefore finds that this is an afterthought and cannot be entertained at this stage.

8.4. Applicant has contended that cross examination of the witnesses had not been allowed and has relied upon various case laws to buttress their contention and submitted that order has been passed without considering their submission in this regard. Government notes that the applicant had not turned up during the investigations though sufficient opportunity had been given to him by the respondent. In fact, he had made himself unavailable during the investigations. Government notes that this issue has been dealt with in great detail by the Appellate Authority who after citing case laws of the Apex Court, did not find it necessary to intervene as there was no change in the material facts.

9.1. Reliance has been placed by the applicant on the decision of the Hon'ble Gujarat High Court's Order dated 08.05.2019 in Civil Application (for stay) No. 1 of 2019 in R/Tax Appeal No. 59 of 2019 [Commissioner of Customs vs. Pravin R. Ajudiya] wherein, the diamonds were allowed to be released on payment of redemption fine considering that

rough diamonds were otherwise freely importable/exportable and are duty free and hence, the court was of the view that a case of absolute stay of the order had not been made out. The relevant paras expounded by the Hon'ble High Court, Gujarat while releasing the rough diamonds are reproduced below;

6. In this case, while the adjudicating authority has ordered absolute confiscation of the rough diamonds, the Tribunal has held in favour of the respondent and has allowed the appeal of the respondent against the order-in-original. Therefore, as on date there is an order of the Tribunal in favour of the respondent. This court, after hearing the learned advocates for the respective parties has found merit in the appeal and has admitted the same by framing substantial question of law.

7. At this stage, the question that arises for consideration is, whether the applicant has made out a case for staying the impugned order or whether the seized goods can be ordered to be released subject to certain terms and conditions.Therefore, at this stage, when the respondent has succeeded before the Tribunal and rough diamonds are otherwise freely importable and are duty free, the court is of the view that a case of absolute stay of the order of the Tribunal has not been made out. However, to protect the interest of the revenue, the goods may be permitted to be released subject to certain conditions. Such conditions would be in line with the earlier orders passed by this court in case of Dharmesh Pansuriya (supra) and D. Jewel (supra):

9.2. The applicant has also relied upon another judgement of Bombay High Court in the matter of seizure of rough diamonds attempted to be exported by M/s. Shine Star Exports. Vide its order dated 10.02.2021 [2021(376) E.L.T. 419 (Bom.)] Hon'ble High Court at para 13 therein, has observed that these goods are freely importable / exportable.

13. "At this stage, we may mention that the goods under consideration are cut and polished diamonds which are freely importable/exportable".

10.1. It is pertinent to note that instant goods were detained on 12.11.2017, however, same were seized only on 05.04.2018. This clearly reveals that even though goods were more than permissible baggage quantity, respondent department did not conclude at the point of detention that the same should be seized. Seizure was effected five months after detention as neither applicant nor anyone else came forward to submit required documents. However, documents were submitted during adjudication. In this regard, the applicant has contended that the production of documents such as invoice, KP certificate, contract note with affidavit of seller, etc. showing licit acquisition of the rough diamonds and that value of Rs. 90,81,803/- mentioned in the invoice had not been considered either by the adjudicating authority or by the appellate authority.

10.2. Applicant has submitted the case law of Neeta Prakash Modi v/s. Commissioner of Custom (P) [2012 TIOL CESTAT MUM], in which Hon'ble Tribunal while highlighting the importance of ascertaining the genuineness of the documents / evidences relating to purchase of seized goods as produced in reply to SCN has observed as under;

9. "..... Further, we find that the purchase documents have been produced by Shri Prakash Modi in reply to the show cause notice, no effort was made by the adjudicating authority to verify the correctness of the said documents and no enquiry was made from Shri Prakash Modi with regard to documents, which otherwise prove that the adjudicating authority has found those documents as correct. Therefore, the appellant has been able to prove the bona fide purchase of the seized diamonds. Further, except

from the statements of the appellant, no other corroborative evidence has been brought out by the Revenue to prove illicit purchase of the seized documents.

10.

11. *Therefore, in the facts and circumstances of this case, we hold that the appellant has been able to produce the documents with regard to bona fide purchases of the seized diamonds and the department has failed to discharge their burden to prove that these documents are fabricated and diamonds in question are illicitly purchased."*

There is considerable merit in the submission of the applicant in this regard. Documents submitted by the applicant during the adjudication proceeding needed to be verified and given adequate weightage based on results of verification. These documents and submissions should not have been brushed aside. These are relevant to proceedings on hand.

11. The applicant has relied upon a case law of Haja Mohideen Ahamed Vs Commissioner of Customs, Chennai decided vide Final Order No. A/41525/2017 on 07.08.2017 by CESTAT, Chennai. Facts of this case were similar to facts of the instant application. Adjudicating authority had allowed redemption of diamonds on payment of redemption fine under Section 125 of the Customs Act and had imposed a penalty under Section 114 *ibid*. The appellant appealed before CESTAT for reduction in quantum of redemption fine and penalty. Hon'ble CESTAT after hearing both sides made following observations while reducing redemption fine and penalty, *"From the facts of record, smuggling of diamonds has not been controverted. Contumacious conduct is definitely been proved in respect of the appellant. Without doubt, imposition of redemption fine and penalty under sections 125 and 114 of the Customs Acts is*

definitely justified. However, after going through the facts of the case, especially considering the assertion of the learned counsel that the actual value of purchase of diamonds was Rs 24 lakhs as indicated in the show cause notice and which assertion has not been disproved by the department, we are of the considered opinion that the interests of the justice would be met adequately by reducing the redemption fine imposed under section 125 to Rs 3,50,000/ (Rupees three lakh fifty thousand only) and penalty imposed under Section 114 to Rs 1,50,000/(Rupees one lakh fifty thousand only)."

Since facts of this case were similar to facts of the instant application and this case has attained finality, therefore the same is relevant for the instant application.

12.1. Government notes that export of rough diamonds is governed by Notification no. 21/2002-07 dated 26.12.2002 issued by the Directorate General of Foreign Trade (DGFT) wherein it is stated that no import or export of rough diamonds shall be permitted unless shipment parcel is accompanied by Kimberley Process Certificate (KPC) required under the procedure specified by the Gems and Jewellery Export Promotion Council (GJPEC). Based on this notification, the CBEC had issued Circular no. 53/2003 – Cus dated 23.06.2003 wherein the procedure for export of rough diamonds has been specified.

12.2. The Kimberley Process Certification Scheme (KPCS) is an international, multi-stakeholder initiative created under the UN Charter to increase transparency and oversight in the diamond industry in order to eliminate trade in conflict diamonds or rough diamonds sold by rebel groups or their allies to fund conflicts against legitimate governments. The KPC Scheme requires that each shipment of rough diamonds being exported or imported should be accompanied by a validated Kimberley Process

Certificate (KPC) issued by the Government of respective countries. This KPC indicates the authenticity of the rough diamonds. In India, the Gem and Jewellery Export Promotion Council (GJEPC) has been designated under KPCS as the appropriate Importing-Exporting Authority by the Government of India. GJEPC verifies, issues and validates the KPC and certifies that the diamonds are conflict free. The KPC among others things contains the country of origin, KP certificate number, date of issue, date of expiry, details of importer and exporter, diamond weight in carats, value of the diamonds, nos of parcels etc. The holder / applicant of the KPC may be a member, non-member of the GJEPC. An agent can also apply on behalf of a member / non-member. The KPC is valid for a period of one year and on expiry the same in India can be renewed through GJEPC.

12.3. Government notes that the applicant during the adjudication of the case, produced an invoice along with a KPC. It was however noticed that the KPC had expired and had not been re-validated. Government notes that no investigations had been done on the aspect of genuineness of the invoice or the KPC. The KPC certificate produced by the applicant before the adjudicating authority bears number 73416, dated 07.09.2017 and endorsement by the-GJEPC, Surat. Vide email dated 30.06.2022, GJEPC, Surat was requested to verify above KPC to ascertain its genuineness or otherwise. The GJEPC, Surat vide their mail dated 05.07.2022 confirmed that they have verified the subject KPC and the same is confirmed to be genuine bearing signature of their official authorised signatory.

12.4. Government notes that the KPC produced (though expired on the date of detention) brings out that the diamonds carried by the applicant were from a legitimate source. Since, the KPC had expired, the applicant prior to carriage of the diamonds was required to re-validate the same. Government finds that the revalidation is a procedural

formality which is done by the GJEPC on request and based on their scrutiny and verification. It is evident that this was a lapse which could have been rectified.

12.5. Government further notes that the applicant during the adjudication stage had submitted an invoice and claimed that the weight of the rough diamonds was 2588.83 carats and its value was Rs. 90,81,803/-. Government notes that in the panchanama, it was recorded that the rough diamonds were contained in plastic pouches and that the weight of the rough diamonds in carats was displayed on these pouches. The total weight of the rough diamonds in the plastic pouches was 2593.62 carats. Government notes that the respondent had got the rough diamonds assayed by a Government Approved Valuer, who ascertained its genuineness and valued these rough diamonds at Rs. 3,50,08,379/-. Government notes that an expert had been engaged by the respondent to ascertain the genuineness and valuation of these rough diamonds. Government also notes that adjudicating authority had considered the report of the Government Approved Valuer who was an expert in the field of assaying diamonds. Government finds that the export of rough diamonds does not attract customs duty, therefore arriving at the assessable value of goods at the time of export is not of much relevance.

13.1. Government finds that the department in the written submission had contended that at the time of interception, the applicant did not possess a valid KPC and had not declared the goods at the point of departure. It was also contended that the rough diamonds of high value and large quantum were not bonafide goods to be carried in the baggage. Also, the applicant had not made himself available at the time of the investigations. All these charges of the department have considerable merit. However, as held the rough diamonds are freely exportable and do not attract any duty and are

not prohibited as such under the Customs Act and/ or by any notification. Only requirement is that rough diamonds be supported with KP Certificate to eliminate trade in conflict diamonds. Therefore, the substantial issue in this case is that the applicant had not declared the rough diamonds at the time of departure and was not in possession of a valid KPC certificate.

13.2 Considering that the export or import of rough diamonds is duty free, that the KPC was produced later by the applicant, albeit a KPC which was not valid on the date of detention, nonetheless, this indicates that the rough diamonds were not conflict diamonds but were from a legitimate source. As no declaration as required under Section 77 of the Customs Act, 1962 was filed by the applicant, and the diamonds at the point of departure were not covered with a valid KPC on the relevant date, the Government notes that the confiscation of the rough diamonds was proper and justified and the applicant had made himself liable for penalty. However, it is noted that there was no ingenious concealment and the applicant when confronted had immediately admitted the possession of the rough diamonds, rough diamonds were from a legitimate source, neither any duty is leviable on export of rough diamonds nor any export benefit was being claimed, confiscating the same absolutely would, therefore, be harsh and excessive. It would be just and fair to allow redemption of goods on reasonable redemption fine as held in a similar case by the Hon'ble CESTAT, Chennai

14. The Government finds that the personal penalty of Rs. 40,00,000/- imposed on the applicant under Section 114(i) and 114(iii) of the Customs Act, 1962 is steep considering that rough diamonds were from a legitimate source, there was no ingenious concealment, neither any duty is leviable on export of rough diamonds nor any export benefit was being claimed. In the SCN, it is seen that the penalty is proposed under

Section 114(i) and (ii) of the Customs Act, 1962 while in the order-in-original, penalty has been imposed under Section 114(i) and (iii). Considering all the relevant facts, Government modifies the penalty under Section 114(i) and Section 114(ii) of the Customs Act, 1962 as proposed in the SCN.

15. In view of the above, the Government sets aside the impugned order of the Appellate Authority in respect of the impugned rough diamonds. The rough diamonds weighing 2593.62 carats and valued at Rs. 3,50,08,379/- are allowed redemption on payment of Rs. 45,00,000/- (Rupees Forty Five Lakhs only). The penalty of Rs. 40,00,000/- imposed under section 114(i) & 114(iii) of the Customs Act, 1962 by the lower authority is reduced to. Rs. 20,00,000 (Rupees Twenty Lakhs only).

16. Revision Application ^{10/1} on disposed of on the above terms.

Shrawan
29/08/22
(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. *245* /2022-CUS (WZ) /ASRA/MUMBAI

DATED *29*.08.2022.

To,

1. Shri. Vinod Kumar Dwarkadas Modi, Room No. 10, Shiv Prasad Apartments, Manchhubhai Road, Near COD Camp, Malad (East), Mumbai - 400097.
2. Commissioner of Customs, Chhatrapati Shivaji International Airport, Sahar, Andheri (East), Mumbai - 400 099.

Copy to:

1. ASAV Attorneys & Advisors LLP, D-42, LGF, South Extension Part-II, New Delhi - 110049.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. Notice Board