

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 51904 of 2024

[Arising out of the Order-in-Original No. 01-2024-COMMR dated 08/01/2024 passed by the Commissioner of Customs (Preventive), Jodhpur, Jaipur]

M/s P P Jewellers & Diamonds Pvt. Ltd.

Through its Director, Mr. Rahul Gupta,
Office at: 23-A, C-1,2,3, Netaji Subhash Place,
Pitampura, New Delhi-110034

...Appellant

VERSUS

Commissioner of Customs (Preventive),

Office of the Commissioner of Customs (Preventive),
Jodhpur NCR Building, Statue Circle, C-Scheme,
Jaipur-302005

...Respondent

WITH

C/51905/2024

C/51902/2024

C/51900/2024

C/51901/2024

C/51903/2024

C/51906/2024

APPEARANCE:

Shri Yuvraj Sharma, Ms. Bhumika Popli and Ms. Shruti Agarwal, advocates for the appellant

Shri Bhagwat Dayal, authorized representatives of the department

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

DATE OF HEARING: 29.01.2026

DATE OF DECISION: 03.06.2026

FINAL ORDER NO's. 51019-51025/2026

JUSTICE DILIP GUPTA:

Customs Appeal No. 51904 of 2024 and **Customs Appeal No. 51905 of 2024** have been filed by M/s P P Jewellers & Diamonds Pvt. Ltd.¹ and M/s. Bharti Gems² to assail that portion of the order dated 08.01.2024 passed by the Commissioner of Customs (Preventive),

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- 1. P P Jewellers**
 - 2. Bharti Gems**

Jodhpur³ that not only confiscates the seized silver jewellery under section 111(o) of the Customs Act, 1962⁴ with an option to the importer to redeem the goods on payment of redemption fine, but also confirms the proposed duty demand with interest to be recovered from Bharti Gems and P P Jewellers jointly and severally under section 28(4) of the Customs Act. The order also imposes penalty under section 112(b)(ii) of the Customs Act upon Bharti Gems, P P Jewellers and M/s. Its My Name⁵ jointly and severally. The order also imposes penalty upon Bharti Gems and P P Jewellers under section 114A of the Customs Act jointly and severally.

2. **Customs Appeal No. 51906 of 2024** has been filed by Its My Name to assail that portion of the order dated 08.01.2024 passed by the Commissioner that imposes penalty upon it under section 112(b)(ii) of the Customs Act jointly and severally with Bharti Gems and P P Jewellers.

3. **Customs Appeal No. 51900 of 2024** has been filed by Amit Pal Singh, an employee of P P Jewellers and Its My Name, to assail that portion of the order dated 08.01.2024 passed by the Commissioner that imposes penalties upon him under section 112(b)(ii) of the Customs Act as also under section 114AA of the Customs Act.

4. **Customs Appeal No. 51903 of 2024** has been filed by Gopal Gupta, an employee of P P Jewellers and Its My Name, to assail that portion of the order dated 08.01.2024 passed by the Commissioner that imposes penalties upon him under section 112(b)(ii) of the Customs Act as also under section 114AA of the Customs Act.

5. **Customs Appeal No. 51902 of 2024** has been filed by

3. the Commissioner
4. the Customs Act
5. Its My Name

Mohammed Nashruddin, an employee of P P Jewellers and Its My Name, to assail that portion of the order dated 08.01.2024 passed by the Commissioner that imposes penalties upon him under section 112(b)(ii) of the Customs Act and section 114AA of the Customs Act.

6. **Customs Appeal No. 51901 of 2024** has been filed by Suraj Mishra, an employee of P P Jewellers and Its My Name, to assail that portion of the order dated 08.01.2024 passed by the Commissioner that imposes penalties upon him under section 112(b)(ii) of the Customs Act and section 114AA of the Customs Act.

7. Bharti Gems is an exporter of silver and gold jewellery and was registered in the Special Economic Zone-II⁶, Jaipur by a Letter of Approval dated 23.01.2009. According to Bharti Gems, it manufactures silver and gold jewellery such as chains, bangles and bracelets whose manufacture does not require heavy machinery or highly skilled workers. In terms of rule 22 of the Special Economic Zone Rules, 2006⁷, Bharti Gems submitted a Bond cum Legal Undertaking on 21.12.2010 for Rs. 25.37 lacs, which was accepted by the Development Commissioner by a Letter of Acceptance dated 13.04.2011. Bharti Gems submitted an additional Bond cum Legal Undertaking for Rs. 224.73 crores, which was also approved and accepted by the Assistant Development Commissioner by a Letter of Acceptance dated 15.01.2016. Bharti Sharma is the proprietor of Bharti Gems. Operation of Bharti Gems were taken care of by Bharti Sharma and her husband Vikas Sharma. By a registered power of attorney dated 11.02.2016, the proprietor authorised one Amit Pal Singh to act, operate and look after the work of Bharti Gems. Amit Pal Singh was also working with P P Jewellers in which Rahul Gupta was one of the Directors. Rahul

6. **SEZ**
7. **SEZ Rules**

Gupta is also a Director of Its My Name. It is for this reason that Bharti Gems borrowed staff of Its My Name for its manufacturing activity.

8. It is stated that from November 2015 to January 2017 Bharti Gems imported 1098 kg silver and 35 kgs of gold, against which it exported 1149.5 kgs of silver jewellery and 37.5 kgs of gold jewellery.

9. The case set out by the department in the show cause notice is that Bharti Gems imported silver and gold bars free of cost without payment of customs duty and these goods were diverted to the domestic tariff area. It is also alleged that Bharti Gems exported other goods in the guise of silver and gold jewellery as it did not have manufacturing facility (machines) or the work force required for manufacturing silver and gold jewellery.

10. A detail reply was filed contesting the allegations made in the two show cause notices.

11. However, the Commissioner confirmed the demand proposed in the show cause notices. The Commissioner framed three issues for determination, as can be seen from the order. The relevant portion of the order is reproduced below:

"4.1 xxxxxxxx. I have carefully gone through the facts of the case and written submissions available on record and oral submissions made during the course of personal hearing. **I observed that it is alleged that M/s. Bharti Gems, a SEZ, unit procured Gold and Silver and claimed to have exported jewellery without having manufacturing facility of jewellery, except bangles of Silver, and thereby diverted the procured Gold and Silver and evaded Customs duty amounting to Rs. 1,44,04,165/-. Thus, I find that the issues to be decided in the case are as under-**

- (i) Whether, the seized Silver Jewellery Weighing 52.997 kgs valued at Rs. 20,40,385/- is liable to be confiscated.

- (ii) Whether, Customs duty amounting to Rs. 1,44,04,165/- along with interest is recoverable from M/s. Bharti Gems.
- (iii) Penalties proposed to be imposed upon the persons is sustainable.”

(emphasis supplied)

12. The Commissioner examined the Letter of Approval dated 23.01.2009 issued to Bharti Gems in connection with the proposal for setting up a unit in SEZ area. The Commissioner noted that this Letter of Approval was issued by the competent authority to Bharti Gems for setting up a manufacturing unit in SEZ for authorised operations of undertaking manufacturing items mentioned in the Letter of Approval but Bharti Gems provided only manufacturing service to overseas entity and did not undertake any manufacturing activity. The Commissioner also noted that Bharti Gems had exceeded the prescribed limit of procurement. The relevant portions of the order are reproduced below:

“4.3 I observe that proposal of setting up of unit in SEZ Area was accepted by the competent authority and conveyed to M/s. Bharti Gems vide letter the LOA F.No. 2/182-SEZ-I/J/Proj./051 dated 23.01.2009 was issued to the Unit for setting up a manufacturing unit in the SEZ for authorized operations for undertaking manufacturer production of items as mentioned in the LoA. Whereas, contrary to the above, they procured raw materials viz. Gold & Silver by way of import from an overseas entity free of cost and without payment of Customs duty and provided only manufacturing services to them. **Hence, they did not undertake manufacturing activity as such but provided only manufacturing services to an overseas entity in terms of Rule 18(6) of SEZ Rules, 2006.**

xxxxxxxxxxxxx

4.4 **I further observe that as per the JSEZ**

Bond No 173, the unit was approved to procure only 50 kg Silver & 2 kg Gold through import for three months or to say 200 kgs of Silver and 8 kgs Gold annually for undertaking authorised operations namely manufacture of Gold and Silver jewellery. The Unit's annual capacity for manufacture/ production approved in the LoA dated 23.01.2009, inter-alia are as under:

- Manufacture of Gold Silver and Platinum Jewellery - 200kg.
- Manufacture of articles of Goldsmiths and silversmiths wares and parts thereof of precious metals or metal clad with precious metals - 100Kg

4.5 Whereas, from the documents resumed and submitted by various persons and provided by SEZ, it has been detected that the Unit had procured through import 330 kg Silver & 11 kg Gold during 2015-16 and 768 kg Silver and 24 Kg Gold during the FY. 2016-17 (up to Dec 2016). Further, it has also been found that the Unit had manufactured and subsequently claimed to have exported 1149.595 kg Silver Jewellery and 37.535 kg Gold jewellery during the period November, 2015 to January, 2017. The quantity of Gold and Silver imported and claimed to have been exported, are detailed in Para 10 of the show cause notice dated 30.12.2020. Thus, I find that M/s Bharti Gems thus exceeded the prescribed Limit of procurement through import as specified in the JSEZ Bond No 173 and also the capacity of manufacture far beyond the limit approved in the LoA."

(emphasis supplied)

13. The Commissioner concluded that Bharti Gems had not carried out any manufacturing activity. The relevant portions of the order are reproduced below:

"4.6 I find that the Deputy Commissioner of Customs, JSEZ, Sitapura, Jaipur had vide his letter

dated 30.10.2018 (RUD-1) intimated that the unit was not having facility to manufacture goods that was shown exported by them. In this regard, I observe that on 20.01.2017 and 29.05.2017, the officers of Customs, SEZ carried out stock verification and found only one each of Metal Melter Machine, Buff Polish Machine, Metal Striper Machine and Polish Vibrator Machine. I also find that Shree Suraj Mishra, Supervisor M/s Bharti Gems, Jaipur in his statement dated 22-23.08.2019 had categorically in his reply to question no. 6, admitted that in the unit only silver bangles were being made by melting silver and " इसके अतिरिक्त कुछ और बनाने की सुविधा भी नहीं थी". Similarly in their statements dated 25.04.2019, Shree Banwari Bairwa and Shree Sayar Dhanka have also admitted the same fact. Further, during the cross examination held on 04.01.2024, Shree Banwari Bairwa on being asked whether in his statement, he twice mentioned that no jewellery except silver jewellery were being made, he admitted the fact.

XXXXXXXXXX

4.7 I further observe that the Unit has claimed to have exported Silver Jewellery with 0.92 purity and Gold jewellery with 0.917 purity. I find that for making silver jewellery of 0.92 purity from 0.999 purity of silver, at least a mixture of 7-8 percent alloy is required and similarly, for making Gold jewellery of 0.917 purity from 0.999 purity of gold, a minimum of 8-8 percent alloy is required. Therefore, to manufacture the quantity of silver and gold jewellery claim to have been exported by the unit i.e. 37.535 kgs (net wt.) of 0.917 purity of Gold & 1149.59 kgs (net wt.) of 0.92 purity of Silver during 2012-13 to 2016-17, a minimum of 75-80 kgs of alloy was required, whereas, as per the procurement details retrieved from NSDL system, the Unit had procured only 8 Kgs of alloys. It defies logic as to how the Unit had manufactured 1187.12 (1149.59+37.53) kgs of jewellery with only 8 kgs of alloy. **Therefore, I find force in the allegation that the unit had actually not manufactured the said goods.**

4.9 **From the above, manufacturing of chains by the Unit in absence of chain manufacturing machines or through job-work/ sub contract forms a reasonable belief that no manufacturing activity was carried out at that place by the M/s Bharti Gems. I observe that confiscation of the silver jewellery found in the unit premises during search proceeding has been proposed under Section 111 of the Customs Act, 1962.** I observe that the noticee has argued that "On 20.01.2017, Stock verification was done in the unit of the noticee and only one silver bangle weighing 26.580 gms was found. Prior to that, on 18.01.2017, the noticee had entered for export a consignment of silver jewellery which was lying with the custodian of SEZ. The noticee did not get permission to export the goods covered by the shipping bill dated 18.01.2017. The customs officers again visited the unit of the noticee on 29.05.2017 when the sealed boxes in which silver jewellery was to be exported vide shipping bill dated 18.01.2017 was presented before the officers. The officers were fully satisfied that the said jewellery was fully accounted for. The officers did not detain or seize this jewellery and it was handed over by them without any conditions to Sh. Amit Pal Singh. These details are mentioned in the panchnama dated 29.05.2017 drawn in the unit of the noticee. Since the unit is in SEZ, the noticee was not able to remove these items from the premises. The officers of customs again visited the unit of the noticee on 23.04.2019 but the said two boxes/chests could not be opened as keys were not available. It is pertinent to note that in the panchnama dated 23.04.2019, it is mentioned that the officers broke the locks of the unit to enter the unit. **Thereafter, the officers visited the unit again on 27.07.2019 and seized those very items of jewellery, which had been handed over by them to Sh. Amit Pal Singh on 29.05.2017 after being fully satisfied that those goods were not liable to be seized/confiscated under the Customs Act, 1962.**"

(emphasis supplied)

14. The Commissioner then examined the execution of an additional

Bond cum Legal Undertaking of Rs. 224.73 crores on 05.01.2016 by Bharti Gems and observed that it could not be considered as it was signed by an authorised signatory of Bharti Gems and not the proprietor of Bharti Gems. The relevant finding is reproduced below:

"4.10.1 I find that in the letter dated 30.10.2018 of the Deputy Commissioner, (Customs), JSEZ, Jaipur (RUD-1), that the Unit executed an additional BLUT for Rs. 224.73 crore on 05.01.2016 which was signed by an authorized signatory and the unit was then apprised the above error and request to submit a revised BLUT duly signed by the proprietor of the unit. The noticee has not furnished any evidence that the BLUT signed by the proprietor of the unit was ever submitted to the authorities. I find that Sh. Rahul Gupta in his statement dated 12.04.2019 against Question 17 has also admitted that the BLUT was not accepted. Thus, I find that the unit was not entitled to import/export beyond the limit of the bond executed originally for setting up the unit."

(emphasis supplied)

15. The Commissioner then considered whether customs duty with interest could be recovered from Bharti Gems and the relevant findings are reproduced below:

"4.11 Now I take up the issue of recovery of Customs duty amounting to Rs. 1,44,04,165/- along with interest from M/s Bharti Gems. I find that it has been established above that the unit M/s Bharti Gems had no facility of manufacture of gold & silver jewellery items, no skilled artisans were ever hired for the purpose, whereas, they had claimed to have exported the jewellery item. This clearly indicates that the unit had infact not exported the jewellery item but have exported the other goods in the guise of silver and gold jewellery and thus had diverted the duty free imported gold and silver on which Customs duty amounting

to Rs. 1,44,04,165/- was foregone. Here, I find that in SEZ, the goods are not examined in routine and Let Export Order are given on basis of Self Certification given by the unit as per the Rule 46(1)(c) and 46(1)(d) of the SEZ Rules, 2006. Thus, the exported goods of M/s Bharti Gems were also not examined. The unit has also not put forth any evidence that their export parcels were ever examined or checked by the Customs Authority at SEZ or Port.

4.11.3 I observe that the noticee has argued that the statements of Sh. Amit Pal Singh, Sh. Gopal Gupta and Sh. Mohd. Nashruddin were recorded while they were in judicial custody in Tihar Jail. These persons were arrested by DRI on 25.04.2019. The statements were recorded under threat by the officers. Subsequently COFEPOSA was imposed on these three persons. The statement of Sh. Suraj Mishra was recorded on 22.08.2019 under threat of arrest. Similarly, the statement of Sh. Amit Pal Singh recorded on 25.04.2019 by DRI was also recorded under threat of arrest. Hence no reliance ought to be placed on any of these statements. I find that the noticee has neither produced any evidence of threat or coercion while recording the statements of these persons nor any of them, has retracted his statements, thus I find no force in the contention of the noticee.

4.11.4 Thus, from the above I find that M/s Bharti Gems have diverted the imported duty free gold and silver into DTA and have exported other goods in guise of silver and gold jewellery and by doing so, have evaded the Customs duty amounting to Rs. 1,44,04,165/-."

(emphasis supplied)

16. The Commissioner also recorded a finding that Bharti Gems, P P jewellers and Its My Name are jointly and severally responsible for the evasion of the customs duty and the relevant finding is reproduced below:

“4.11.6(iv) **From the above, it is evident that during the period of dispute, the operations of the unit M/s. Bharti Gems were directly and indirectly being carried out by M/s. P P Jewellers and Diamonds Pvt. Ltd, and M/s. Its My Name Pvt. Ltd. through their employees namely Sh. Amit Pal Singh, Sh. Gopal Gupta and Sh. Suraj Mishra.** Therefore, I find that M/s. Bharti Gems, M/s. P P Jewellers and Diamonds Pvt. Ltd. and M/s. Its My Name are jointly and severly responsible for the evasion of the Customs Duty amounting to Rs. 1,44,04,165/- and thus the amount of duty evaded is recoverable from M/s. Bharti Gems and M/s. P P Jewellers and Diamonds Pvt. Ltd. Jointly and severly.”

(emphasis supplied)

17. Shri Yuvraj Sharma, learned counsel for the appellants assisted by Ms. Bhumika Popli and Ms. Shruti Agarwal made the following submissions:

- (i) The Letter of Approval issued to Bharti Gems expressly permitted the setting up of a manufacturing unit in the SEZ area for carrying out authorised operations, including manufacture of the silver and gold jewellery. The Special Economic Zone Act, 2005⁸ and the SEZ Rules recognize authorised operations as activity-based approvals, and do not restrict such operations based on the ownership or mode of procurement of raw material. The scheme of the SEZ Act as well as the SEZ Rules, do not prohibit procurement of raw material free of cost from overseas entities, nor does it render a manufacturing activity carried out by an SEZ unit, non-compliant

8. **SEZ Act**

merely because the finished goods are produced pursuant to contractual arrangements or job-work type models;

- (ii)** The distinction sought to be drawn by the Commissioner in the show cause notices dated 30.09.2020 and 31.12.2020 as well as in the order between the expressions "manufacture" and "manufacturing services" is artificial and is not supported by the SEZ Act and the SEZ Rules;
- (iii)** The finding recorded by the Commissioner that Bharti Gems had exceeded the prescribed limit of procurement through Bond cum Legal Undertaking dated 23.01.2009 and the capacity of manufacture is beyond the limit approved in the Letter of Acceptance is against the records. Bharti Gems had furnished an additional Bond cum Legal Undertaking dated 05.01.2016 for an amount of Rs. 224.73 crores, which was approved by the Assistant Development Commissioner, and such approval was formally communicated to the unit by Letter of Approval dated 15.01.2016. Bharti Gems had carried out the manufacturing activities and related authorised operations during the relevant period strictly on the basis of the said approval granted by the competent authority;
- (iv)** It is only subsequently, in the year 2017, that the unit was informed that the aforesaid approval was allegedly not valid on the ground that the additional Bond cum Legal Undertaking had been signed by an authorised representative of the Unit and not by the

proprietor. This objection was raised after the approval had been granted and acted upon. Once an approval was granted by the competent authority, the SEZ unit is entitled to act upon such approval, and the activities carried out on the basis thereof cannot subsequently be termed as illegal or unauthorised;

- (v)** The customs authorities themselves, upon physical verification, found the goods to be duly accounted for and tallying with the records of the unit. Accordingly, the goods seized on 20.01.2017 were released through a Panchnama dated 29.05.2017. Having examined the records, accepted their correctness, and released the goods, the department cannot now allege that the very same activities were illegal or in violation of the provisions of the Customs Act. Consequently, the levy of customs duty and imposition of penalty cannot be sustained on the basis of a subsequent objection relating to the additional Bond cum Legal Undertaking dated 05.01.2016, which had already been examined and approved by the competent authority by letter dated 15.01.2016;
- (vi)** The finding recorded by the Commissioner that the unit did not have the facility to manufacture the goods that were shown to have been exported is not correct. This finding is based on assumption and surmises. At every stage of the inquiry, the department was informed that jewellery, especially chains were made by hand. The impugned order,

however, proceeds on an erroneous presumption that chain jewellery can only be manufactured by use of specialised machinery and not by hand. The absence of a chain manufacturing machine, therefore, cannot lead to the conclusion that manufacturing activity did not take place, particularly when all the records pertaining to the manufacture, namely the stock register of Bharti Gems, had been submitted. The labourers of the contractor, during the cross examination, stated that jewellery manufacturing was carried out at Bharti Gems;

- (vii)** Even otherwise, the statements made under section 108 of the Customs Act cannot be considered as relevant if the procedure contemplated under section 138B of the Customs Act is not followed;
- (viii)** The finding recorded by the Commissioner that the payments made by Bharti Gems to the workers was not genuine is not correct;
- (ix)** The finding recorded by the Commissioner that the unit could have not manufactured the goods, since from the NSDL system it is clear the unit had procured only 8 kilograms of alloy and during the relevant period it exported 1149.59 kgs of silver jewellery and 37.535 kgs of gold jewellery is not correct. The relevant records had been placed to show the procurement, consumption and manufacture of silver and gold jewellery. The order ignores these documents and relies upon the NSDL system data to draw a conclusion which is based on assumptions;

- (x)** The finding recorded that Bharti Gems did not have manufacturing facility and did not manufacture gold and silver items, as no skilled artisans were ever hired and, therefore, the unit had exported other goods in the guise of silver and gold jewellery and had diverted the duty free imported gold and silver to the domestic trade is not correct;
- (xi)** The finding recorded that the operations of the Bharti Gems were directly and indirectly carried out by P P Jewellers and Its My Name are not correct. P P Jewellers and Its My Name are distinct entities. While Bharti Gems functions as a SEZ unit governed by the SEZ Act and SEZ Rules, P P Jewellers is not an SEZ exporter and carries on its business under the Advance Authorization Scheme and the Export Exhibition Scheme under the Foreign Trade Policy. Amit Pal Singh was the authorised representative of Bharti Gems who had been appointed through a power of attorney. Amit Pal Singh is independently associated with P P Jewellers; and
- (xii)** The case of the department relating to interlinked role of the appellants is not based on any independent enquiry but is based from a unrelated show cause notice dated 26.09.2019 issued by a Directorate of Revenue Intelligence⁹ pertaining to Its My Name. The proceedings initiated by the DRI stands substantially diluted, stayed or rendered ineffective by judicial intervention.

18. Shri Bhagwat Dayal, learned authorized representatives appearing for the department, however, supported the impugned order and made the following submissions:

- (i)** The SEZ unit could only have undertaken authorised operation of manufacture of goods as per the Letter of Approval;
- (ii)** The SEZ unit imported duty free gold and silver material but did not use it for authorised operations nor did it have manufacturing facility. In fact, it had undertaken manufacturing services, which was not an approved authorised operation;
- (iii)** The SEZ unit has shown export of goods which it did not manufacture in the absence of manufacturing facility;
- (iv)** Onus was on the unit to prove proper utilization of imported goods;
- (v)** Import of duty-free goods was made beyond the limit contained in the Bond cum Legal Undertaking accepted on 13.04.2011;
- (vi)** No labour was engaged for manufacturing and fabricated payment vouchers of labours were produced;
- (vii)** Proper Bank Guarantee was not submitted on 05.01.2016; and
- (viii)** The Commissioner was justified in placing reliance upon statements made under section 108 of the Customs Act.

19. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department

have been considered.

20. The first issue that requires examination is as to whether Bharti Gems had exceeded the prescribed limit of procurement under the Letter of Approval issued by the competent authority.

21. In this connection, it needs to be noted that earlier by a Letter of Approval dated 23.01.2009 permission was granted to Bharti Gems to register in the Special Economic Zone to manufacture silver and gold jewellery. In terms of rule 22 of the SEZ Rules, Bharti Gems submitted a Bond cum Legal Undertaking on 21.12.2010 for Rs. 25.37 lakhs, which was accepted by the Development Commissioner by Letter of Approval dated 13.04.2011. The Commissioner has found as a fact that Bharti Gems had exceeded the prescribed limit of procurement by only considering the Bond cum Legal Undertaking executed by Bharti Gems for Rs. 25.37 lakhs, as is clear from paragraphs 4.3, 4.4 and 4.5 of the order, which paragraphs have been reproduced above.

22. Bharti Gems had contended before the Commissioner that it had not exceeded the prescribed limit of procurement as it was covered by the subsequent Bond cum Legal Undertaking submitted by Bharti Gems on 05.01.2016, which was accepted by the competent authority by a Letter of Acceptance dated 15.01.2016. This Bond cum Legal Undertaking has not been taken into consideration by the Commissioner only for the reason that it was signed by an authorized signatory and not by the proprietor of Bharti Gems. It needs to be noted that no objection was raised by the competent authority regarding this Bond cum Legal Undertaking when it was submitted by Bharti Gems and in fact Letter of Acceptance dated 15.01.2016 was issued. Once approval was granted by the competent authority, the SEZ unit was entitled to act upon such

approval and activities carried out on the basis of the said Bond cum Legal Undertaking cannot subsequently be termed as illegal or unauthorised. There is no finding by the Commissioner that if this subsequent Bond cum Legal Undertaking was taken into consideration, Bharti Gems exceeded the limit of procurement. In this view of the matter, the finding recorded by the Commissioner that Bharti Gems exceeded the prescribed limit of procurement through import as specified in the Bond cum Legal Undertaking is not justified.

23. The second issue that requires to be considered is whether Bharti Gems had carried out any manufacturing activity in the unit.

24. The Commissioner also placed reliance upon the statements made by Suraj Mishra, Supervisor of Bharti Gems and Banwari Bairwal and Sayar Dhanka. Under section 108 of the Customs Act to hold that Bharti Gems had not carried out any manufacture.

25. Statements made under section 108 of the Customs Act cannot be relied upon if the procedure contemplated under section 138B of the Customs Act is not followed.

26. Section 108 of the Customs Act deals with power to summon persons to give evidence and produce documents. It provides that any Gazetted Officer of customs shall have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under the Customs Act.

27. Section 138B of the Customs Act deals with relevancy of statements under certain circumstances and it is reproduced below:

"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.”

28. It would be seen that section 108 of the Customs Act enables the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under this provision. It is these statements which are referred to in section 138B of the Customs Act. A bare perusal of sub-section (1) of section 138B makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness

before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of the Customs Act shall apply to any proceedings under the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain.

29. In **M/s Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur¹⁰**, a Division Bench of this Tribunal examined the provisions of section 108 and 138B of the Customs Act as also the provisions of section 9D and 14 of the Central Excise Act, 1944, which are similar to the provisions of section 108 and 138B of the Customs Act, and the observations are:

“**28.** It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central

10. Excise Appeal No. 51148 of 2020 decided on 01.04.2025

Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. **The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act.** The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence."

(emphasis supplied)

30. What is also important to notice is that the statements made by Suraj Mishra, Amit Pal Singh, Gopal Gupta and M.N. Khan were subsequently retracted.

31. The Commissioner has also observed that jewellery making is a highly technical and artistic process and labourers with no previous experience were shown to have been hired by Bharti Gems and the payments made by Bharti Gems to workers in cash was doubted. In this

connection, it needs to be noticed that Bharti Gems had categorically informed the department by letters dated 10.02.2017 and 14.02.2017, when the first seizure of silver jewellery took place on 20.01.2017, that "we primarily focus on hand made jewellery in accordance with the Orders received from the customer". Bharti Gems had also during the course of inquiry pointed out that jewellery, especially chains, were made by hand. The Commissioner, however, has presumed that chain jewellery can only be manufactured by use of specialized machinery and not by hand. In the absence of any expert opinion, such a finding could not have been recorded by the Commissioner, more particularly when hand made chain jewellery is a traditional and established method of manufacture of jewellery in the industry.

32. Bharti Gems also claimed that records pertaining to the manufacture, namely, the stock register of Bharti Gems had been submitted to the department. Even the statements made by the workers during cross-examination demonstrate that the workers had acquired requisite skills during the course of employment. The labourers had also in their statements and cross-examination stated that they received payments in cash directly.

33. The absence of chain manufacturing machines, therefore, cannot lead to a conclusion that manufacturing activity had not taken place.

34. The Commissioner has also recorded a finding that Bharti Gems could not have carried out any manufacturing activity as the NSDL system showed that it had procured only 8kgs of alloy during the relevant period, but had exported 1149.59 kgs of silver jewellery and 37.535 kgs of gold jewellery.

35. The contention of learned counsel for the appellant that NSDL

system records are not statutory and exhaustive records of raw material procurement and the manufacture of goods by a SEZ unit cannot be disbelieved because all transactions are not reflected, deserves to be accepted.

36. Bharti Gems had also placed on record the following documents to show procurement, consumption and manufacture of silver and gold jewellery:

- (a) Contemporaneous Stock Register;
- (b) Purchase Ledger of Alloys;
- (c) Invoices of Alloys and other Consumables; and
- (d) Shipping Bill/Invoice along with the Packing List dated 18.01.2017.

37. The aforesaid documents were maintained by Bharti Gems in the ordinary course of business. The Commissioner could not have ignored the same without giving any good reason. The Commissioner, on the other hand, placed reliance only on the NSDL system data.

38. In **M/s. Kronos Solutions India (P) Ltd. vs. Commissioner of Central Excise and Service Tax, Noida**¹¹, the Tribunal held that denial of CENVAT credit, which was the subject matter before the Tribunal, could not be sustained solely on the ground that particulars of the service providers were not reflected in the NSDL website when the receipt of services and payment of tax were otherwise not in dispute. It was further held that NSDL website is not conclusive and that such electronic data cannot be made the sole basis for disallowance when the particulars furnished by the assessee have not been formed to be untrue.

39. Based on the aforesaid finding that the unit of Bharti Gems situated

11. **Service Tax Appeal No. 59615 of 2013 dated 01.10.2015**

in SEZ did not have the manufacturing facility, the Commissioner has proceeded to hold that the unit had not exported the jewellery items but had exported other goods in the guise of silver and gold jewellery and had thus diverted the duty free imported gold and silver to the domestic tariff area. In this connection, the Commissioner observed that the Let Export Order was given on the basis of self certification given by the unit and so the goods exported were not examined. The Commissioner further observed that the unit also did not put forth any evidence to substantiate that the export parcels were examined or checked by the customs authorities at SEZ or port.

40. This finding of the Commissioner is not justified. The Commissioner could not have shifted the onus on the appellant to substantiate that the goods were examined. It was for the officers to have examined the goods and the department cannot be permitted to urge that since the goods were not examined, the appellant exported goods other than gold and silver jewellery articles. The finding recorded by the Commissioner, therefore, that Bharti Gems had diverted the imported duty free gold and silver into the domestic tariff area and had exported other goods in the guise of silver and gold jewellery and thereby evade customs duty amounting to Rs. 1,44,04,165/- cannot be sustained.

41. The Commissioner has also observed in the impugned order that the Letter of Approval issued to Bharti Gems was for setting up a manufacturing unit in the SEZ area for authorised operation for undertaking manufacture of items mentioned in the Letter of Approval, but Bharti Gems procured raw material from an overseas entity free of cost without payment of customs duty and provided manufacturing services to such overseas entity.

42. The Letter of Approval permitted Bharti Gems to set up a unit in SEZ for carrying out authorised operations, including manufacture of gold and silver jewellery. SEZ Act and the SEZ Rules do not prohibit procurement of raw material free of cost from overseas entities nor do they render manufacturing activity carried out by SEZ unit non-compliant merely because the finished goods are produced pursuant to some contractual arrangements. Thus, the distinction sought to be drawn by the Commissioner between the expressions "manufacture" and "manufacturing services" is artificial.

43. The Commissioner has also observed that during the period of dispute, the operations of Bharti Gems were directly and indirectly carried out by P P Jewellers and Its My Name. All three are different entities. Bharti Gems functions as a SEZ unit while P P Jewellers is not a SEZ exporter. Its My Name carries on its business under advance authorization scheme and the export exhibition scheme under the Foreign Trade Policy 2015-20.

44. During the period of dispute, Amit Pal Singh was the authorised representative of Bharti Gems in terms of the power of attorney dated 11.02.2016 executed by Bharti Sharma. Amit Pal Singh was also associated with P P Jewellers but this does not mean that there was any inter-mingling of finances or statutory benefits.

45. It now needs to be examined whether penalty under section 112(b)(ii) and section 114A of the Customs Act could have been imposed on Bharti Gems, P P Jewellers and Its My Name.

46. The finding recorded by the Commissioner on this aspect is as follows:

"4.13.1 As held above, the unit M/s Bharti Gems have evaded the Customs Duty

amounting to Rs. 1,44,04,165/- by way of diverting the duty free imported goods into DTA market and exporting other goods in guise of silver and gold jewellery, have rendered themselves liable for penal action under section 112(b)(ii) and Section 114A of the Customs Act, 1962. However, as it has been held above that during the period of dispute, the operations of the unit M/s Bharti Gems were directly and indirectly being carried out by M/s. P P Jewellers and Diamonds Pvt Ltd and M/s. It My Name Pvt Ltd. through their employees namely Sh. Amit Pal Singh, Sh. Gopal Gupta and Sh. Suraj Mishra. Therefore, I find that M/s. Bharti Gems, M/s. P P Jewellers and Diamonds Pvt. Ltd and are jointly and severely responsible for the evasion of the Customs Duty and thus the amount of duty evade is recoverable from M/s. Bharti Gems and M/s P P Jeweller and Diamonds Pvt Ltd jointly and severely. Therefore, they are jointly and severely liable for penalty under Section 112(b)(ii) and Section 114A of the Customs Act, 1962."

(emphasis supplied)

47. As it has been found that Bharti Gems had not evaded payment of customs duty of Rs. 1,44,04,165/-, nor had it diverted the duty free imported goods into domestic tariff area, nor it had exported goods other than silver and gold jewellery, penalties under section 112(b)(ii) and section 114A of the Customs Act could not have been imposed upon Bharti Gems, P P Jewellers and Its My Name.

48. Penalties have has also been imposed upon Gopal Gupta, Mohammed Nashruddin and Suraj Mishra under section 112(b)(ii) and section 114AA of the Customs Act.

49. A perusal of the order indicates that penalties have been imposed upon them for the reason that they had co-operated in the evasion of the customs duty. It has been found as a fact that customs duty has not been

evaded. Thus, the imposition of penalties under section 112(b)(ii) and section 114AA of the Customs Act on the aforesaid persons cannot be sustained.

50. Thus, for all the reasons stated above, the impugned order in so far as it concerns Bharti Gems, P P Jewellers, Amil Pal Singh, Gopal Gupta, Mohammed Nashruddin, Suraj Mishra and Its My Name is set aside and Customs Appeal No.'s 51904 of 2024, 51905 of 2024, 51900 of 2024, 51903 of 2024, 51902 of 2024, 51901 of 2024 and 51906 of 2024 are allowed,

(Order Pronounced on **03.06.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 51904 of 2024

[Arising out of the Order-in-Original No. 01-2024-COMMR dated 08/01/2024 passed by the Commissioner of Customs (Preventive), Jodhpur, Jaipur]

M/s P P Jewellers & Diamonds Pvt. Ltd.**...Appellant**

Through its Director, Mr. Rahul Gupta,
Office at: 23-A, C-1,2,3, Netaji Subhash Place,
Pitampura, New Delhi-110034

VERSUS

Commissioner of Customs (Preventive),**...Respondent**

Office of the Commissioner of Customs (Preventive),
Jodhpur NCR Building, Statue Circle, C-Scheme,
Jaipur-302005

WITH

C/51905/2024**C/51900/2024****C/51903/2024****C/51902/2024****C/51901/2024****C/51906/2024****APPEARANCE:**

Shri Yuvraj Sharma, Ms. Bhumika Popli and Ms. Shruti Agarwal, advocates for the appellant

Shri Bhagwat Dayal, authorized representatives of the department

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

DATE OF HEARING: 29.01.2026**DATE OF DECISION: 03.06.2026****ORDER**

Order pronounced.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P. V. SUBBA RAO)
MEMBER (TECHNICAL)**