

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

CUSTOMS APPEAL NO. 50495 OF 2021

[Arising out of Order-in-Original No.7/2019-20 dated 13.11.2019 passed by the Principal Commissioner of Customs (Import), New Delhi]

State Trading Corporation of India Limited
Through Shri Rajendra Rawat, Chief Manager Bullion
Jawahar Vyapar Bhawan, Tolstoy Marg,
New Delhi-110001

Appellant

Vs.

**Commissioner of Customs (ACC-Import),
New Delhi**
Air Cargo Complex, New Customs House, New Delhi

Respondent

WITH

CUSTOMS APPEAL NO. 50195 OF 2020

[Arising out of Order-in-Original No.7/2019-20 dated 13.11.2019 passed by the Principal Commissioner of Customs (Import), New Delhi]

Arun Kumar Agarwal
Partner of M/s. Venus Industries
C-24, Lawrence Road Industrial Area, Delhi - 110035.
Presently At: B-1/74, Safdarjang Enclave,
New Delhi-110029

Appellant

Vs.

**Commissioner of Customs (ACC-Import),
New Delhi**
Air Cargo Complex, New Customs House, New Delhi

Respondent

AND

CUSTOMS APPEAL NO. 50196 OF 2020

[Arising out of Order-in-Original No.7/2019-20 dated 13.11.2019 passed by the Principal Commissioner of Customs (Import), New Delhi]

M/s. Venus Industries
C-24, Lawrence Road Industrial Area, Delhi - 110035.
Presently At: B-1/74, Safdarjang Enclave,
New Delhi-110029

Appellant

Vs.

**Commissioner of Customs (ACC-Import),
New Delhi**

Air Cargo Complex, New Customs House, New Delhi

Respondent**Appearance:**

Present for the Appellant(s): Shri N. Viswanathan Advocate [C/50495/2021]
Shri Rajesh Chhibber, Advocate [C/50195 & 50196/2020]
Present for the Respondent: Shri Rajesh Singh, Authorised Representative

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

Date of Hearing: **05/05/2026**Date of Decision: **30/06/2026****Final Order Nos. 51093-51095 / 2026****K. ANPAZHAKAN:**

CUSTOMS APPEAL NO. 50495 OF 2021 has been filed by M/s. State Trading Corporation (herein after referred as the appellant/STC) against the Order-in-Original No.07/2019-20 dated 13.11.2019 read with Corrigendum dated 07.01.2020, passed by the Commissioner of Customs (ACC-Import), New Delhi, wherein customs duty amounting to Rs.3,68,10,660/- has been demanded from the appellant/STC along with interest and equal amount of duty as penalty under section 114A of the Customs Act, 1962, in terms of section 28(4) of the Customs Act read with Circular No.27/2016-Cus.

1.1. CUSTOMS APPEAL NO. 50196 OF 2020 has been filed by M/s. Venus Industries having its registered office at C-24, Lawrence Road, Industrial Area, Delhi-110035 (herein after referred to as 'Venus Industries') against the same Order-in-Original No.07/2019-20 dated 13.11.2019 read with Corrigendum dated 07.01.2020, wherein a penalty of Rs.36,81,066/- has been imposed on M/s. Venus Industries under Section 114 of the Customs Act, 1962.

1.2. CUSTOMS APPEAL NO. 50195 OF 2020 has been filed by Mr. Arun Kumar Agarwal against the penalty of Rs.25,00,000/- imposed on him vide the impugned order under Section 114AA of the Customs Act, 1962.

1.3. As all the three appeals have emanated from the same Order-in-Original, they are all taken up together for decision by a common order.

2. The facts of the case are that the appellant/STC is one of the nominated agencies of Government of India for import of Bullion into the country and supply the same to the domestic buyers and exporters of jewellery. M/s. Venus Industries is a registered manufacturer and exporter of gold jewellery. They are one of the exporters who purchased duty free gold from STC under the replenishment scheme. Mr. Arun Kumar Agarwal is the Partner of this exporting company (M/s. Venus Industries).

3. Intelligence was gathered by the officers of Directorate of Revenue Intelligence (DRI), Hyderabad indicating that the M/s. Venus Industries has fraudulently purchased duty free gold bars from STC under replenishment scheme against the exports of jewellery made by them by resorting to mis-declaration of description of export goods and value addition in the export documents and without complying with the norms specified in FTP, and thereby helped STC in evading payment of applicable customs duty on the gold obtained /purchased from STC under the Replenishment Scheme.

4. On the basis of the intelligence, investigation was initiated by the officers of DRI, Hyderabad against STC and M/s. Venus Industries. Upon completion of the investigation, a Show Cause Notice dated 24.10.2018 was issued by the Additional Director General, DRI, Zonal Unit-Hyderabad, inter alia to STC and M/s. Venus Industries, alleging wrong availment of duty exemption of bullion under the Replenishment Scheme. The Show Cause Notice demanded customs duty amounting to Rs. Rs.3,68,10,660/-, along with interest and penalties, from STC. The Notice also proposed penalties on the co-noticees, namely, M/s. Venus Industries and Mr. Arun Kumar Agarwal.

6. The said Notice was adjudicated by the Principal Commissioner of Customs, ACC-Import, vide Order-in-Original No.7/2019-20 dated 13.11.2019 read with Corrigendum dated 07.01.2020 (hereinafter referred to as the 'impugned order'), wherein the Customs duty of Rs. Rs.3,68,10,660/- as demanded in the Show Cause Notice has been confirmed against STC, along with interest and penalty. Penalties have

also been imposed on the co-noticees, i.e., M/s. Venus Industries and Mr. Arun Kumar Agarwal.

6.1. Aggrieved by the confirmation of the demand of customs duty along with interest and penalties in the impugned order, the appellants have filed these appeals.

7. The appellant/STC submits that they can import gold from the nominated agencies without payment of customs duty as per Notification No.57/2000-cus dated 08.05.2000 for supply under the replenishment scheme; that the said exemption is available subject to the condition of fulfillment of the provision in the Foreign Trade Policy and Handbook of Procedures. It is pointed out by the appellant-STC that in the present case, they have sold gold to M/s. Venus industries under the Replenishment Scheme; that M/s. Venus Industries have purchased 144900 grams of gold jewellery having 0.916 purity, valued at Rs.40,06,34,886/-, under invoice No. 45 dated 25/01/2017 from Bullion line, Hyderabad; these articles of gold jewellery were manufactured by Bullion line with a job worker viz. Ghanshyamdas Jewellery at Hyderabad; M/s. Venus Industries have exported 144900 grams of gold jewellery through M/s NS Jewellery Trading Company Limited, Hongkong to their foreign buyer M/s MN Khan Jewellers (FZE), Sharjah, UAE, under 4 shipping bills filed at Air Cargo Delhi. It has also been submitted by them that all the Shipping bills were filed for export of articles of jewellery under replenishment scheme. Thus, it is the case of the appellant-STC that M/s. Venus Industries are eligible to purchase gold under the replenishment scheme.

7.1. The appellant-STC also submits that at the time of filing shipping bills for exporting the jewellery, M/s. Venus Industries have submitted provisional invoices to the Customs; that the provisional invoices contained information such as gross value, making charges with value addition @2.05%, gross weight and net weight in 916% purity terms, rate in US dollars. It has been stated that the allegation of the Department is that as per the provisions at para 4.38 of FTP 2015-20 read with para 4.61 of HBP of 2015-20, M/s. Venus Industries should have achieved a minimum value addition of @3.5%, as the goods were not manufactured by 'fully mechanised' process; accordingly, contended the Department contended that M/s. Venus Industries was not eligible

for availing the duty free gold under Replenishment Scheme against the above exports made by them and hence customs duty has been demanded from STC, the agency which imported the gold duty free and supplied to Venus Industries.

7.2. It is the submission of the appellant-STC that M/s. Venus Industries purchased 144900 grams of 0.916 purity and exported 144900 grams of gold jewellery and the entire gold purchased has been exported by Venus Industries. Regarding value addition, STC submitted that M/s. Venus Industries got the gold jewellery manufactured through the job worker, M/s Ghanshyamdas Jewellery, Hyderabad on "fully mechanised" system and hence they were required to achieve a value addition of 2.05% only. In this connection, the appellant STC further submitted that in similar circumstances, in another case where Bullion line and other party exported kadas, which were also got manufactured from the same job worker i.e., M/s. Ghanshyamdas, obtained duty free gold bars from Diamond India Ltd. under Replenishment Scheme, the issue has been decided by the CESTAT, Hyderabad; that a similar case was made by DRI, wherein notice was issued on same lines and order was passed confirming the demand of customs duty from Diamond India Ltd; that the said order was challenged before the CESTAT at Hyderabad, which vide Final Order No. A/30054-30063/2024 dated 08.02.2024 allowed the appeal by observing that the processes undertaken by M/s. Ghanshyamdas were sufficient to hold that the same were manufactured by fully mechanized process (37.3- page 33 of CESTAT order); while arriving at such conclusion, the Tribunal has considered the result of cross examination of job worker (paragraph 16.14 therein); while deciding that case, the Tribunal has relied upon the fact that the payment of making charges of Rs.5 per gram and the quantity of gold jewellery made in one day are sufficient to establish that the jewellery were manufactured by mechanized process (paragraph 22). It is argued that the observations made by the Tribunal in the said case are equally applicable to the facts and circumstances of the present case also as the jewellery in this case was also manufactured by the same job worker, using the same machinery.

7.3. Furthermore, the appellant-STC submits that the entire gold purchased by M/s. Venus Industries have been exported by M/s. Venus

Industries. As the department has not brought in any other violation other than the value addition, the demand of customs duty from them, as confirmed in the impugned order, is legally not sustainable.

7.4. On the basis of the submission that they have not violated any provisions of the Foreign Trade Policy and no demand of customs duty is sustainable against them, the appellant-STC also contended that no penalty can be imposed on them in the facts and circumstances of the case.

8. The co-appellants, M/s. Venus Industries and Mr. Arun Kumar Agarwal, submitted that the factual information submitted by STC shall apply to their cases also. Similarly, they have also relied on the decision of the CESTAT, Hyderabad in the case of Diamond India Ltd. vide Final Order No. A/30054-30063/2024 dated 08.02.2024. It is their submission that the job worker remained same in both the cases and the process carried out in by the job worker was also the same. (see paragraph 37.3 of the order of the CESTAT, Hyderabad in Diamond case and paragraph 15.1 of the impugned order). Further, it is explained that the job charges were also same in both the cases i.e. Rs.5 per gram. It is submitted that the only difference is that in said case, the job worker was cross examined whereas in the instant case, since proper opportunity was not given to the appellants, they could not cross examine the job worker. However, it is the contention of these appellants that so long as the facts of both the cases are identical and the processes carried out and the job charges paid were the same, the result of the said decision is applicable in the instant case. The appellants, M/s. Venus Industries and Mr. Arun Kumar Agarwal, thus submitted that the facts and legal position of instant case being identical to the case of Diamond India passed by CESTAT, Hyderabad, which has been upheld by Hon'ble Telangana High Court, the present appeals deserve same treatment. Accordingly, they prayed for setting aside the penalties imposed on them.

8.1. Without prejudice to the above, the appellants M/s. Venus Industries and Mr. Arun Kumar Agarwal further submitted that the entire transaction in the instant case were well within the knowledge of Department; that there had been no violation of FTP; the value and quantity of goods was declared in the export documents. Therefore, it is argued by them there could be no mala fide intention on their part as

they merely purchased the gold jewellery and exported the same. The appellants further pointed out that neither the job worker nor Bullion line were made party to the case and hence it is also their stand the statement given by the job worker cannot be relied upon to impose penalties on them.

9. On the other hand the Ld. Authorized Representative representing the Revenue submitted that as per the provisions at para 4.38 of FTP 2015-20 read with para 4.61 of HBP of 2015-20, M/s. Venus Industries should have achieved a minimum value addition of @3.5%; as M/s. Venus Industries have achieved the value addition @2.05% only, they are not eligible for the purchase of duty free gold under the Replenishment Scheme against the above exports made by them. He also contends that as STC, being the nominated agency, imported duty free gold in terms of Customs Notification No.57/2000-Cus dated 08/05/2000 and Boards Circular No.27/2016 dated 10/06/2016 by executing a bond with a condition that they shall pay all duties and charges claimable on account of the goods under Customs Act, 1962 and Central Excise Act, 1944 and the rules made thereunder together with interest, they are liable to pay the customs duty demanded in this case; further that STC had also undertaken that they shall comply with the conditions and limitations as stipulated in the Foreign Trade Policy and Hand Book of Procedures as amended from time to time; they also declared that Government through the Commissioner of Customs/Central Excise may recover the sum due from them in the manner laid in the Customs Act, 1962 or Central Excise Act, 1944. Thus, he submits that duty has been rightly demanded from STC as they have not fulfilled the conditions stipulated in the Foreign Trade Policy. Accordingly, he has also justified the penalties imposed on the co-appellants M/s/ Venus Industries and Mr. Arun Kumar Agarwal.

10. Heard both sides and perused the appeal documents submitted before us.

11. We find that STC is a Nominated Agency who can import gold without payment of customs duty, in terms of Notification No.57/2000-cus dated 08.05.2000, for supply under the Replenishment Scheme. The said exemption is available subject to the condition of fulfillment of the provision in the Foreign Trade Policy and Hand Book of Procedures. In

the present case, we find that appellant/STC have sold gold to M/s. Venus industries under the Replenishment Scheme. M/s. Venus Industries have purchased 144900 grams of gold jewellery having 0.916 purity, valued at Rs.40,06,34,886/-, under invoice No. 45 dated 25/01/2017 from Bullion line, Hyderabad. These articles of gold jewellery were manufactured by Bullion line with a job worker namely, Ghanshyamdas Jewellery at Hyderabad.

11.1. It is an admitted fact that M/s. Venus Industries have exported 144900 grams of gold jewellery through M/s NS Jewellery Trading Company Limited, Hongkong to their foreign buyer M/s MN Khan Jewellers (FZE), Sharjah, UAE, under 4 shipping bills filed at Air Cargo Delhi. As per the documents filed at the time of exports, M/s. Venus Industries have achieved a value addition of 2%. The allegation of the Department is that as per the provisions at para 4.38 of FTP 2015-20 read with para 4.61 of HBP of 2015-20, M/s.Venus Industries should have achieved a minimum value addition of @3.5%, as the goods exported were not manufactured by fully mechanised process. Accordingly, it is the Department's contention that M/s. Venus Industries is not eligible for availing the duty free gold under Replenishment Scheme against the above exports made by them. From the records placed before us, we find that M/s. Venus Industries got the jewellery manufactured through the job worker, M/s Ghanshyamdas Jewellery, Hyderabad. We find that the same job worker had manufactured jewellery for the gold procured under the Replenishment Scheme from M/s. Diamond India Limited, against whom a similar case was made by DRI by issuing a Show Cause Notice on the same lines and an order was also passed confirming the demand of customs duty from M/s. Diamond India Ltd. The above matter in the case of M/s. Diamond India Limited came to be decided by the CESTAT at Hyderabad vide Final Order No. A/30054-30063/2024 dated 08.02.2024 [Customs Appeal No. 40654 of 2020 & ors. – CESTAT, Hyderabad]. We observe that the process undertaken by the job worker remained same in both the cases as evidenced from the observations available in paragraph 37.3 of the order of the CESTAT, Hyderabad in Diamond case and in paragraph 15.1 of the impugned order. For ready reference, the relevant paragraph from the said order of the CESTAT, Hyderabad, is reproduced below:

"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."

11.2. In the Diamond India Limited case (supra), the CESTAT, Hyderabad has held that the job work performed by the job worker M/s Ghanshyamdas Jewellery, Hyderabad should be treated as the process performed by a "fully mechanised" system. Further, we find that the job charges were also same in both the cases i.e. Rs.5 per gram as evident from paragraph 22 of the above CESTAT order. While deciding that case, the Tribunal has relied upon the fact that the payment of making

charges of Rs.5 per gram and the quantity of gold jewellery made in one day are sufficient to establish that the jewellery were manufactured by mechanized process. The observations made by the Tribunal in the said case are equally applicable to the facts and circumstances of the present case as the jewellery in this case was also manufactured by the same job worker, using the same machinery. The relevant observation of the Tribunal, Hyderabad in the case of M/s. Diamond India Ltd. (supra) reads as follows: -

"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."

11.3. As the facts of both the cases are identical and the processes carried out and the job charges paid were the same, we hold that the result of the said decision is equally applicable to the facts and circumstances of the instant case. We also find that the decision of CESTAT, Hyderabad, in the case of M/s. Diamond India Limited (supra) has been upheld by Hon'ble Telangana High Court. Thus, in view of the decision rendered by the Hon'ble Telangana High Court in the case of M/s. Diamond India Limited, we hold that the appellant M/s. Venus Industries has manufactured the jewellery through a "fully mechanised" system and hence, the appellants were required to achieve a minimum value addition of 2.05% only. Thus, we do not find any merit in the contention of the Department that appellant M/s. Venus Industries had

to achieve a value addition of 3.5%, for their entitlement under the Replenishment Scheme. Accordingly, we hold that the demand of customs duty confirmed in the impugned order is not sustainable.

11.4. The appellants have also contested the demand confirmed in the impugned order on the ground of limitation. In this regard, we find that the appellant has filed all the Shipping bills for export of articles of jewellery under Replenishment Scheme. At the time of filing shipping bills, they submitted provisional invoices to the Customs. The provisional invoices consisted of information such as gross value, making charges with value addition @2.05%, gross weight and net weight in 916% purity terms, rate in US dollars. Thus, we agree with the submission of the appellant that they have not suppressed any information from the Department. Thus, we observe that there was no intention to evade customs duty established in this case. Accordingly, we hold that the demand of customs duty confirmed by invoking the extended period of limitation is not sustainable and hence we set aside the same.

11.4.1. For the same reasons, we also hold that no penalty imposable on the appellant-STC and accordingly, the penalties imposed on them stand set aside.

12. Next, we take up the issue of imposition of penalties on M/s. Venus Industries and Mr. Arun Kumar Agarwal. In the instant case, M/s. Venus Industries purchased the gold jewellery, exported the entire gold purchased and they have achieved a value addition of 2.05%. The allegation of the Department is that M/s. Venus Industries should have achieved a minimum value addition of @3.5%, as the goods were not manufactured by a 'fully mechanised process'. It can be observed that the aforesaid allegation has been made mainly on the basis of the statement made by the job worker. In this context, we take note of the fact that M/s. Venus Industries got the jewellery manufactured through the job worker, M/s Ghanshyamdas Jewellery, Hyderabad. The same job worker has manufactured jewellery for the gold procured under the Replenishment Scheme for Diamond India Limited, which case stands decided by the CESTAT, Hyderabad, as already discussed supra. In the case of Diamond India Ltd. cited supra, the CESTAT, Hyderabad has held that the job work performed by the job worker M/s Ghanshyamdas Jewellery, Hyderabad should be treated as a process performed by a

"fully mechanised" system. In view of the discussions in the preceding paragraphs, it has been held that the process undertaken by the job worker in this case also should be treated as a process performed by a "fully mechanised" system. Thus, there is no case made out by the Revenue for imposition of penalties on the above allegations. Further, we also note that neither the job worker nor Bullion line were made party to the case. The request for cross examination of the job worker who has given the statement was also not allowed. Considering the above, we hold that the statement given by the job worker cannot be relied upon in this case to impose penalties on these appellants. Thus, we hold that the penalties imposed on the appellants namely, M/s. Venus Industries and Mr. Arun Kumar Agarwal, are not sustainable and hence, we set aside the same.

13. In the result, we set aside the impugned order and allow the appeals filed by the appellants, with consequential relief, if any, as per law.

(Order pronounced on **30.06.2026**)

**Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)**

**Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)**