

**Government of India**  
**Ministry of Commerce & Industry**  
**Directorate General of Foreign Trade**  
**Udyog Bhawan, New Delhi -110011**  
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F. No. 01/92/171/26/AM-19/ PC-VI/30-31, TR.No. 47 Date of Order: 22.12.2021  
Date of Dispatch: 23.12.2021

Name of the Appellant: **Star Brillian Pvt. Ltd.,**  
**Unit No 006,**  
**Block-1 SEEPZ-SEZ, Andheri (E),**  
**Mumbai - 400096.**

IEC Number: **0388093897**

Order appealed against: **Order No. Dev. Commr/B.S/10/2018 dated**  
**05.11.2018 passed by Development**  
**Commissioner, Santa Cruz Electronics Export**  
**Processing Zone- Special Economic Zone**  
**(SEEPZ-SEZ)**

Order-in-Appeal passed by: **Amit Yadav, DGFT**

**Order-in-Appeal**

Star Brillian Private Limited, Andheri (E), Mumbai (hereinafter referred to as "the Appellant"), a SEZ unit, has filed an appeal dated 26.02.2019 under Section 15 of Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original dated 05.11.2018, passed by the Development Commissioner (hereinafter referred to as "DC"), Santa Cruz Electronics Export Processing Zone-Special Economic Zone (SEEPZ-SEZ) imposing a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only).

2.1. Vide Notification No. 101 (RE-2013)/2009-2014 dated the 5<sup>th</sup> December 2014, the Central Government has authorized the Director General of Foreign Trade aided by one Addl. DGFT in the Directorate General of Foreign Trade to function as Appellate Authority against the orders passed by the Development Commissioner, Special Economic Zones as Adjudicating Authorities. Hence, the present the appeal is before me.

2.2. Any person/party deeming himself/itself aggrieved by this order, may file a review petition under the provisions of Section 16 of the FT(D&R) Act, 1992 before the Appellate Committee, Department of Commerce, New Delhi.

3. **Brief facts of the case:**

- 3.1. The Appellant, Star Brilliant Pvt. Ltd. has a unit located at Unit No 006, Block-1 SEEPZ-SEZ.
- 3.2. On 18.05.2018, Security staff posted at SEEPZ-SEZ intercepted a vehicle while it was making an exit and checked bags of the passengers in the vehicle. During the scanning it was found that one bag belonging to Ms. Snehal Dhale was having some jewellery items who was holding SEEPZ entry pass no. 355123-261802 in the name of the Appellant. Her bag contained two bracelets, three rings and two pieces of ear rings. It was further observed that she was also holding the Identity Card in the name of M/s. HRD Antwerp Training Institute having office address at Bandra Kurla Complex. The matter was reported to Specified officer, who directed to carry out further investigation in this case.
- 3.3. During investigations, the statements of Ms. Snehal Dhale, and Ms. Margo Vermeulen, Lab Manager, M/s HRD Diamond Institute and Ravindra Chhabria, M.D., M/s. HRD Diamond Institute Pvt. Ltd. and Shri Hitesh Parmar, Manager, Appellant having its office at Bandra Kurla Complex, were recorded under Section 22 of the SEZ Act, 2005.
- 3.4. Appellant vide its letter dated 25.06.2018 submitted that the jewellery detained by SEEPZ from the possession of Ms. Snehal Dhale was not its property. It further informed that the jewellery belonged to its business associate and it did not manufacture jewellery.
- 3.5. The detained jewellery was examined and valued by a Government approved valuer on 27.06.2018. The jewellery items were valued at Rs. 1,49,740 /- and were certified to be old and used. The applicable duty on the above mentioned goods was around Rs. 29,940.51/- when they were removed to DTA.
- 3.6. DC issued a Show-cause Notice (SCN) to the Appellant, Ms. Snehal Dhule and Ms. Margo Vermeulen on 24.09.2018 as to why :-
- (i) The assorted studded Gold jewellery articles valued at Rs. 1,49,740/- with applicable duty of Rs 29,940.51/- should not be confiscated under section 11(8) of the FT(D&R), Act, 1992.
- (ii) Penal action should. not be taken against them under the Sections 25 and 54 (2) of SEZ Act, 2005, Rules 34 and 36 of SEZ Rules, 2006 read with Sections 11(2), 11(8) and 12 of FT(D&R), Act, 1992 for violation of SEZ Act, 2005 and SEZ Rules, 2006.

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3.7. Appellant/Noticees appeared before the DC for Personal hearing on 15.10.2018. In reply to the SCN and during personal hearing before the DC, the Appellant/Noticees stated that :-

- (i) Ms. Snehal Dhule was working as a diamond grader with M/s. HRD Antwerp Training Institute having office at Bandra Kurla Complex since 2014 and was having SEEPZ entry pass in the name of M/ s. Star Brilliant Pvt. Ltd. bearing S.No. 355123-201802 valid up to 12.02.2019. She was assigned the work of grading on behalf of her company M/ s. HRD Antwerp Training Institute in the premises of Appellant but till the date of her statement she had not done any work of grading.
- (ii) The grading work of diamonds at Appellant was to be carried out by M/s. HRD Antwerp Training Institute, as per mutual agreement. Hence, entry permit for SEEPZ in the name of Noticees was made by Appellant.
- (iii) The jewellery detained on 18.05.2018 was old and used and was brought only for video shooting of the grading process.
- (iv) It was admitted by the Appellant that it had committed a mistake by bringing in and taking out the precious goods from SEEPZ-SEZ without declaring the same to proper officer and requested to take a lenient view.

3.8. On examination of the Appellant/Noticees submissions, the DC found that :-

- (i) Appellant and its employees admitted their offence of unauthorized entry and attempted removal of goods valued at Rs. 1,49,740/- with applicable duty of Rs. 29,940.51/- from SEEPZ-SEZ without the required documentation and without reporting to proper officer as envisaged in SEZ Rules and Regulations.
- (ii) The jewellery was old and used as certified by the government approved valuer. After the goods were brought inside SEEPZ-SEZ without proper procedures, Appellant tried to remove the same in an unauthorized manner.

3.9. DC, SEEPZ-SEZ vide Order-in-Original dated 05.11.2018 imposed a penalty of Rs. 50,000/ on the Appellant for unauthorized entry and attempted removal of goods valued at Rs. 1,49,740/- with an applicable duty of Rs. 29,940.51/- from SEEPZ-SEZ without proper documentation and without reporting to concerned authorities as envisaged in SEZ Rules & Regulations.

4.0. Aggrieved by the Order-in-Original dated 05.11.2018, the Appellant filed the present Appeal. Shri Amar Nath Sharma, Authorised Representative and Shri Mehul Shah, Director, Appellant appeared in the personal hearing held on 13.08.2021. Appellant in its written and oral submissions has submitted as under :-

- (i) Appellant denied the charges made in the Order and stated that the order did not appreciate the facts on record and illegally as well as illogically implicated it without any reason or rhyme.
- (ii) The jewellery detained was old and belonged to the M.D. of M/s. HRD Antwerp Training Institute having office at Bandra Kurla Complex.
- (iii) The individual in whose possession the personal jewellery was found was not an employee of the Appellant.
- (iv) Appellant is not engaged in any manufacturing activity but is a service provider only and it did not have any stock of jewellery.
- (v) Since the permission for video shooting was not given to the Appellant, it did not invite the staff of M/s. HRD Antwerp Training Institute with any kind of jewellery. If it would have done so, it would have advised the staff to declare the same while entering and exiting from SEEPZ premises.
- (vi) None of the employees of M/s. HRD Antwerp Training Institute or its M.D. admitted that they were carrying the jewellery on the request of the Appellant.
- (vii) Appellant had only called on the employees of M/s. HRD Antwerp Training Institute for imparting training to graders in SEEPZ.
- (viii) In the impugned order it was observed that the jewellery was old and used and the same was certified by a government approved valuer.

5.0 Comments on the Appeal were obtained from the office of the DC, CSEZ. The DC vide letter dated 20.05.2021 has, inter-alia, stated as under :-

- (i) DC considered all the facts on records and for violation of provisions of Rule 36, 34 and 22 of SEZ Rules, 2004, a penalty was imposed on the Appellant.
- (ii) DC took cognizance of the fact that the jewellery was old and used, as certified by the Government approved valuer.

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- (iii) Ms. Snehal Dhale and Ms. Margo Vemeulen in their statements stated that they were working as Diamond Graders in M/s. HRD Antwerp Training Institute and were assigned the work of grading on behalf of their company in M/s. Star Brilliant Pvt. Ltd. Both admitted their offence of unauthorized entry and attempted removal of goods from SEEPZ-SEZ without proper documentation and without reporting to proper office as envisaged in SEZ Rules & Regulations.
- (iv) In the Order-in-Original it was clearly mentioned that the Appellant was into certification of jewellery and not into manufacturing of the jewellery.
- (v) Appellant has deposited the penalty amount of Rs. 50,000/- vide DD No. 43460 dated 22.04.2019.

6.0 I have considered the Adjudication Order dated 05.11.2018 passed by DC, SEEPZ-SEZ, oral/written submissions made by the Appellant, comments received from the DC and all other aspects relevant to the case. It is noted that :-

- (i) Rule 34 of the SEZ Rules, 2006 states that :-

*"34. Utilization of goods — The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption: .....*"

- (ii) Rule 36 of the SEZ Rules, 2006 states that :-

*"36. Filing of documents for admission and removal — All documents for admission of goods into and out of Special Economic Zone shall be filed before the Authorized Officer of Customs."*

- (iii) In the present case, dutiable goods were carried into the SEZ without filing any documents for admission of goods in the SEZ and were being later taken out without intimation to the authorized Officer of Customs.
- (iv) It is not denied by the Appellant that the old and used jewellery was admitted into the SEZ by persons who were issued an entry pass by the Appellant. It was the duty and responsibility of the Appellant to ensure that any employee/person entering its Unit in the SEZ was apprised of the relevant policy provisions and the same were duly followed by their visitors.

(v) In the present case, Appellant cannot be absolved of the responsibility of violation of SEZ Act and Rules and terms of the conditions of the Bond-cum-LUT executed by it with the DC, SEEPZ-SEZ.

(vi) The firm is liable for penal action under the FT(D&R) Act, 1992 read with SEZ Act and Rules. The action taken by DC for imposition of penalty of Rs. 50,000/- deserves no intervention.

7.0 In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5<sup>th</sup> December 2014, I pass the following order :-

**Order**

F. No. 01/92/171/26/AM-19/ PC-VI/

Dated: 22.12.2021

The Appeal is dismissed.



(Amit Yadav)

Director General of Foreign Trade

Copy to :

1. Star Brilliant Pvt. Ltd., Unit No 006, Block-1 SEEPZ-SEZ, Andheri (E), Mumbai - 400096.
2. DC, Santa Cruz Electronics Export Processing Zone-SEZ for information.
3. Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. DGFT's website.



(Randheep Thakur)

Joint Director General of Foreign Trade