

S.K. Gems Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-26-1998

Reported in : (1999)(105)ELT208TriDel

Appellant : S.K. Gems

Respondent : Commissioner of Customs

Judgement :

1. The brief facts of the case are that on 21-9-1993 Customs Authorities examined a parcel addressed to the appellants herein and found that it contained 12 lots of cut and polished precious stones (emeralds) totally valued at Rs. 9,78,5127-. The value and weight tallied with the invoice but size of some of the lots did not tally with the invoice. A show cause notice was issued on the same day calling upon the appellants to produce necessary documents for lawful import of the goods, failing which the goods would be confiscated and penalty imposed. The appellants explained before the Deputy Collector that they have exported 16 packets of cut and polished emerald of different shapes to M/s. Bright Edelstein Gems, Germany and the German Co. had returned 12 lots. During the personal hearing, the expert opined that since the weight and the value of the stones tallied with the export invoice, the difference in size of certain pieces which could have been due to internationally accepted practice of mentioning caliberated size (and not exact size) or due to measurement by different gauges and from different angles was negligible and could be ignored. He opined that the goods were fully identifiable for the purpose of re-import. The Deputy Commissioner accepted the contentions of

the appellants and released the goods. The Revenue filed an appeal to the Commissioner of Customs (Appeals) who accepted the case of the department that the goods in question could not be identified as the same ones which had been exported earlier to Germany, and set aside the Deputy Commissioner's order. Hence this appeal.

2. We have heard Shri G.K. Rana, Learned Advocate and Shri P.K. Jain, Learned SDR.3. The plea of the appellants that difference in size of certain pieces of stones was negligible and could have been due to the internationally accepted practice of mentioning caliberated size in export invoice and not exact size and due to measurement by different gauges and from different angles has not been rebutted by the department. The expert opinion dated 20-10-1995 of Shri Duli Chand Tank also bears out the contention of the appellants. Further, the foreign buyer had also informed the appellants vide their letter dated 22-9-1993 that on account of mistake of their employee, the description of goods was wrongly typed as "pears" in place of "octagons". The appellant's explanation is plausible, while on the other hand, the department has not controverted either the expert opinion or the submission of the appellants regarding practice of mentioning caliberated size in export invoice. In the light of the above, we accept the appellants' contention that minor differences in size of the stones is not sufficient for holding that the goods cannot be identified, as being the same as those exported to M/s. Bright Edelstein Gems, Germany through invoice No. 9, dated 3-3-1993, particularly when the value and weight of the lots of the stones tallied with the invoice.

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