Commissioner of Customs Vs. Veer Gems

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-29-1998

Reported in : (1999)(112)ELT333Tri(Mum.)bai

Appellant : Commissioner of Customs

Respondent : Veer Gems

Advocate for Def. : Shri. J.C. Patel

Judgement :

1. This is an appeal filed by the department against the decision of the Collector (Appeals) made in Order-in-Appeal No. S/49-57/93-Lic.

599/93-BCH, dated 13-10-1993 whereunder the Collector (Appeals) had allowed the appeal of the respondent reversing the findings of the Deputy Collector who by his order dated 4-2-1993 had confiscated the rough diamonds imported by the respondent for violation of Section 111(m) of the Customs Act imposing a fine of Rs. 50,000/- and penalty of Rs. 25,000/-.

2. The respondent imported a consignment of rough diamonds declaring the weight to be 13055.40 cts. On weighment it was found that the goods weighed only 6760.40 cts. and not 13055.40 cts. On being asked, it was explained by the respondent that the goods were purchased from the supplier M/s. Sunraj Gems who purchased from M/s. Argyle Diamonds. It would appear that the actual supplier M/s. Argyle Diamonds split up the supply into two packets, viz. 6760.40

carats and 6295:00 carats. By mistake M/s. Argyle Diamonds sent only 6760.40 carats. At the time of import they filed bill of entry dated 13-11-1992 declaring that the contents of the bill of entry was in accordance with a bill of lading.

They also undertook to reduce different set of any documents showing different state of facts so that customs authority be known. The bill of entry showed the quantity as 13055.40 carats. The customs authorities issued a show cause notice dated 23-12-1992 charging the respondent for violation of Section 111(m) inasmuch as the declared quantity was 13055.40 carats whereas the goods -(sic)nally arrived showed only 6760 carats.

The show cause notice further charged the respondent of violating Section 46(4) of the Customs Act. The adjudicating authority, viz, the Deputy Collector passed order dated 4-2-1983 did not agree with the explanation given by the importer, namely all the mistakes had happened at the place of export and the explanation given by the bank which was not a bank of the importer but bank of the supplier duly certified by Belgium Customs Authority. The adjudicating authority levied fine and penalty as indicated in the earlier portion of the order against the respondent/importer who filed an appeal to the Collector (Appeals) who by the impugned order had held that explanation submitted by the bank by its letter dated 23-9-1993 as well as the importer was found acceptable and allowed the appeal. Hence the present appeal by the department.

3. The learned DR arguing on behalf of the department states that in the entire set of facts it was pertinent to note that the importer in fact had two sets of documents at the time of filing of bill of entry.

Therefore having in possession of two sets of documents they had not filed the correct declaration in respect of the quantity of the goods imported thereby they had violated Section 46(4) of the Customs Act.

4. As against this, Shri J.C. Patel the learned Counsel for the respondent, states that there was a mistake at the port of export.

Nowhere does the show cause notice say that the importer had managed to get these types of two sets of documents. In fact the show cause notice only charges that M/s. Sunraj Gems were aware of the shortage and not the importer nor was there any investigation in a proper way in this case. He also invited my attention to a letter addressed by M/s.

Antwerps Diamond to the Assistant Collector written on 18-11-1992 whereunder the mistake as happened which was not noted by their customers as well as the Belgium Customs and they also sought apology for the inconvenience caused. It is not the case of the department that Antwerp Diamantbank n.v. was not the bankers for the actual importers.

6. The finding given by the Collector (Appeals), in my view, cannot be questioned. It is true that there has been a mis-declaration, viz, that what was contained in the invoice is different from what is the weight of the goods imported. The splitting up of the goods into two packets of 6700 cts. and 6295 cts. was done by the supplier M/s. Argyle Diamond with whom the importer did not have any contract but only the seller, viz, M/s. Sunraj Gems had contract with the supplier. The bank of the supplier, viz, Ant-werpse Diamantbank n.v. by its letter dated 18-11-1992 clinches the issue that there has been a mistake committed at the port of shipment for which there is no evidence to implicate the importer.

7. I am therefore constrained to hold that the facts of the case do not warrant interference with the impugned order passed by the Collector (Appeals).