

Esjay Gems Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-04-2000

Reported in : (2000)(121)ELT831TriDel

Appellant : Esjay Gems

Respondent : Collector of Customs

Judgement :

1. The appellant M/s. Esjay Gems, Bombay filed Bill of Entry No. 288 dated 10-4-1990 for clearance of Synthetic Industrial Diamond Power weighing 14000 carats net, valued at CIF US \$ 1400 at the rate of US \$ 0.10 per carat. The sizes of Synthetic Industrial Diamond Power marked on the packages were found as under :- According to the department the rate per carat of the goods was too low in comparison to official price list dated 2-4-90 circulated by the supplier namely M/s. Gemmata NV. Prices quoted in the official price list are as follows :- 2. The Additional Collector of Customs, Bombay who adjudicated the proceedings after taking into consideration of the submissions made by the party and an evidence placed on record, determined the total value of the goods taking the rate of 0.20 US \$ per carat.

3. Aggrieved by the said order the party has filed an appeal before the Tribunal. When the matter was called Shri N. Kothari, Prop, of the appellant appeared in person and referred to the written sub missions/arguments on behalf of the appellant. In the written submission it was submitted that quotation of price not a reliable guide to be determined value as it was held in the case of Shyam Antenna

Electricals Ltd. v. CC reported in 1991 (53) E.L.T. 133 (T). He also submitted that other contemporaneous evidence was placed on record to substantiate his contention that the price declared by him was a fairly negotiated price and there was no justification for enhancement.

4. On the other hand, Shri P.K. Jain, Id. SDR appearing for the Revenue submitted that not only the price list offered by the supplier but also other contemporaneous evidence was taken into consideration while determining the value. He submitted that the invoice relied upon by the assessee in the case of M/s. J.K. Engineering Works has not been accepted by the Customs Department as correct one. Furthermore, within the 3 months from the date of import by the assessee other importer namely M/s. Subhdil Exports, Bombay imported the same goods from the same supplier at US \$ 0.20.

5. We have considered the matter. The Additional Collector of Customs has analysed the position observing that it is seen from the official price list dated 2-4-90 of the supplier as well as invoice dated 14-6-90 issued to Subhdil Exports, Bombay for Industrial Synthetic Diamond Power of sizes 0-4 that the goods have been supplied at the rate of 0.20 US \$ per carat. He also observed that Trade Panel Members as well as Expert Customs Appraisers have also assessed the goods in question at the rate of 0.20 US \$ per carat. We find that in the facts and circumstances and the valuation is based upon the contemporaneous evidence particularly the other importer namely M/s. Subhdil Exports has imported the same rate of goods at Rs. 0.20 US \$ per carat. There was no justification to accept the value declared by the assessee.

Considering over all facts and circumstances, we do not find any infirmity in the finding given by the Additional Collector in determining the value of the goods imported by the assessee. However, taking into consideration that the appellant is an actual user of the goods, we are of the view that penalty of Rs. 25,000/- is excessive.

Accordingly, in the view we have taken, penalty amount is reduced to Rs. 5,000/- as against Rs. 25,000/-. But for this reduction in the penalty amount the order passed by the Additional Collector is otherwise upheld. Appeal is disposed of in

the above terms.

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