

Diamond and Gem Development Vs. Commr. of Cus.

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SooperKanoon Citation : sooperkanoon.com/19062

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-02-2000

Reported in : (2000)(122)ELT811Tri(Mum.)bai

Appellant : Diamond and Gem Development

Respondent : Commr. of Cus.

Judgement :

1. Although the stay application is listed today, we have, with the consent of the departmental representative, acceded to the request made by the advocate of the appellant to take up the appeal and dispose of it.
2. The appellant imported a consignment of diamonds. These were declared in the bill of entry as "rough diamonds non-industrial non-mounted unset unworked (excluding industrial diamonds)" and the benefit of notification 20/Cus/99 was claimed. This notification exempts from duty rough diamonds.
3. In the order impugned in the appeal, the Commissioner has declined to consider these goods as rough diamonds. We are not required to go into the correctness or otherwise of the order denying the benefit of the notification for the reason that the advocate for the appellant says that it wishes to re-export the diamonds on the ground that if the benefit of the notification is denied, the import of these diamonds become uneconomic. He therefore requests for re-export. He contends that there is no mis-declaration justifying confiscation of the diamonds ordered under Clause (m) of Section 111 of the Act or imposition of penalty on the appellant under

Section 112.

4. We are not able to agree. We agree that it is possible that the appellant may have thought that the goods were not rough diamonds for the reason that, in the form in which they were imported, they were not cut or polished. We must add that this sounds somewhat improbable; the general understanding in the trade and in the industry from the literature that the appellant had produced, is that a rough diamond is one that, after being mined, has not been cut and polished.

Significantly, however, the appellant has also described the goods as unworked. Advocate for the appellant says that the diamonds were in fact used for industrial purpose and have now been imported for faceting and polishing before being sold as gemstones. He says that the appellant made the declaration based on the description on the supplier's invoice. The certificate of the country of origin, which was enclosed to the invoice, in fact, indicated the diamonds to have been worked.

5. Strictly speaking, we are concerned with the correctness of the description of the goods made in the bill of entry. Going by this description, the goods had wrongly been declared, since they have been worked. Therefore, they are liable to confiscation. We must not omit to take note of the fact that the importers have been in the diamond trade for ten years (as informed by the advocate for the appellant, in reply to a question). However, we note that the certificate of origin did indicate that the goods were worked and was also produced before the Customs department. Taking this into account, and the fact that the goods are to be re-exported, we are of the view that the reduction in the fine is called for.

6. Accordingly, we permit the goods to be re-exported within a month from the receipt of this order subject to payment of fine of Rs. 50,000/-, and set aside the penalty.