RamnaraIn and Co. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-26-2003

Reported in : (2003)(157)ELT308Tri(Mum.)bai

Judge : S T Gowri, P Chacko

Appellant : RamnaraIn and Co.

Respondent : Commissioner of Customs

Judgement :

1. Ramnarain & Co. tendered three shipping bills for export of cut and polished synthetic stones. Examination of the consignment lead the officers to conclude that the goods were rough synthetic stone and not cut and polished as declared by the exporters. The value declared of the goods was also much lower than what was declared. Notice issued to the exporter alleged that the total value of three consignments tendered for export sought to be exported should be around Rs. 3 lakhs instead of the declared value totalling Rs. 90,92,074/-. Amendment of the value and confiscation of the goods under Clause (d) of the Section 113 of the Act was proposed. Penalty was also proposed on Ashok Kumar Gupta, the partner of the exporter. After considering the submissions made by the exporter and its partner and hearing them, the Commissioner has passed orders ordering confiscation of the goods, permitting them to be cleared on payment of fine of Rs. 3 lakhs and imposed penalty of Rs. 3,50,000/- each on the exporter and on Ashok Kumar Gupta, its partner. Hence these appeals.

2. It is the contention of the common Counsel for the appellant that the goods that were tendered for export were in fact cut and polished synthetic stones as was declared. In coming to his conclusion that the goods except for a small quantity, were rough and unpolished, the Commissioner has relied heavily upon a report dated 18-7-96 of the Gemmological Institute of India tendered after the goods were examined by one of its staff. In this report, the Secretary of the institute states that except for a small quantity of cut faceted and polished synthetic stones forming part of lot 14B, the goods were rough synthetic rubies, blue sapphire or cubic zirconia. The Counsel for the appellant relies upon opinions tendered by South India Synthetic Stones Manufacturers and Dealers Association Tiruchirapalli, R.M. Seth and Co.

Mumbai, Dr. R.K. Avasia of the Department of Geology, St. Xavier's College and Chimanlal Mehta. As the departmental representative points out the samples of the goods which these reports described as cut and polished are not shown to have been out of the lot that was tendered for export and seized by the department.

3. In the absence of any evidence to show that the sample that forms the subject-matter of the goods was of the same kind and quality as the goods tendered for export and under consideration by us, it is not possible to apply the opinion of these persons/bodies to the goods under consideration. There is totally absence of any evidence to show this. Counsel for the appellant not able to say why the report of the Gemmology should not be accepted as correct. It is also significant, as the departmental representative points out that despite being given an opportunity to have the seized goods examined by experts of the appellant's choice, it failed to do so. In the letter of 22-9-1997, of the Asstt. Commissioner to Ramnarian & Co. and Kantawala & Co., its Advocates, the Asstt. Commissioner has said that test report brought under hearing by the Counsel for the appellant were not acceptable for the reason that they were not of the same quality and kind of the goods under dispute and offered to have the consignment reexamined by the appellant's expert in the presence of its Advocate. By his reply of 27-2-1997, the appellant has declined to accept this suggestion stating that re-examination of the goods will not serve any purpose.

4. Reduction of value of the goods to Rs. 3 lakhs and their confiscation (except for the small lot found to be cut polish and faceted under Clause (i) of Section 113 of the Act) is justified. With regard to the small quantity of cut and polished goods no doubt they have been taken back. We do not find acceptable the contention by the Counsel for the appellant that leniency is called for because the appellant chose not to have the exports in the shipping bills under consideration accounted towards export obligation in respect of an advance licence. It cannot be disputed that had the misdeclaration not been detected by the customs, the goods could have been exported at the value declared by the exporter and exports would have qualified for the advance licence claimed to that export. We therefore do not find any case for reducing the fine for confiscation or the penalty on the exporter. Although this point was not urged before us or taken in the appeal, the appeal of Ashok Kumar Gupta has to be allowed in the light of the long line of decision of the Tribunal holding that penalty under the Act cannot be imposed on a partner in addition to that imposed on the firm of which he is a partner. Penalty imposed on Ashok Kumar Gupta is hence set aside.