Sagar Impex Vs. Commissioner of Customs

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SooperKanoon Citation : sooperkanoon.com/39342

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-13-2005

Reported in : (2006)(193)ELT289Tri(Mum.)bai

Judge : J Balasundaram, Vice-, A M Moheb

Appellant : Sagar Impex

Respondent : Commissioner of Customs

Judgement :

1. The early hearing application is allowed and the stay application is taken up for disposal.

2. After hearing both sides for sometime, we take up the appeal itself for disposal, after waiving pre-deposit of penalty imposed upon the appellants by the Commissioner.

3. The brief facts are that the appellants sought to export 4247.56 Cts of Rough Diamonds to Hong Kong by declaring the FOB value of US $ 15 per carat. The department found that the value declared did not correspond to the value of the goods, sought to be exported. The department constituted an Expert Panel to value the goods afresh. It was found that the value arrived at by the Expert Panel was much more than the declared FOB value. In the adjudication proceedings, the Commissioner confiscated the goods under Section 113(i) of the Customs Act but allowed them to redeem on payment of fine of Rs. 15 lakhs.

During the adjudication proceedings, the appellants had taken a plea before the Commissioner that the Panel evaluated the export goods have given an incorrect value of the goods and requested for re-valuation of the said goods by another Expert Panel. This plea has not been dealt with by the Commissioner. The Id. DR opposed this plea on the ground that the representatives of the appellants were present at the time of valuation undertaken and they could have objected to the value arrived at by the Panel at that time itself. He, therefore, pleaded that the value arrived at by the Expert Panel is correct.

4. Heard both sides. We find that the appellants have been contesting against the constitution of the Panel right from the beginning.

Interest of justice demands that the valuation should be done by independent experts consisting of one member chosen by the appellants and the other by the department. The goods should be re-valued in the above manner and a decision arrived at during the remand proceedings.

We, therefore, remand the matter to the Adjudicating Authority to have a Panel constituted as directed above and take a final decision. The stay application as well as the appeal are disposed of as above.