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**Desh Deep Vs. Collector of Customs**

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**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Sep-19-1995

**Reported in** : (1995)(80)ELT425TriDel

**Appellant** : Desh Deep

**Respondent** : Collector of Customs

**Judgement** :

1. This is an appeal against the order of the Additional Collector of Customs, Jaipur, confiscating a parcel of rough emeralds under Section 111(m) of the Customs Act, 1962 while permitting it to be redeemed on fine of Rs. 60,000/- and also imposing a penalty on the appellant of Rs. 20,000/- under Section 112(a) of the Act.

2. Shri A.C. Jain, Advocate for the appellant says that the appellant is an importer of precious stones. The appellant had placed the order on a supplier in London for supply of rough emeralds and they filed the bill of entry showing the value of the goods in accordance with the invoice. Subsequently a corrected invoice was received which was also filed with the Customs. By this time, however the customs had examined the goods and appraised the value at US $ 26112.15 against the invoiced value of US $ 59987.25. The appellants had waived conditions of a show cause notice. However, at the time of hearing Shri J.K. Shekhri, a Director of the supplier had himself confirmed that by mistake the incorrect invoice has been initially sent. Shri Jain further argues that Additional Collector has not specifically indicated what the value is with regard to which he finds misdeclaration. He has

not dealt with the point raised by Shri Shekhri. He points out that there is a difference between the lot number as indicated in the first invoice and the lot number as found on the goods, as is apparent from the Additional Collectors' order. He says that there is not sufficient material to sustain the order of confiscation and penalty, and relies upon the decision of this Tribunal in Hind Enamel Company v. Collector of Customs, 1992 (67) E.L.T. 107 and Allen Bredley v. CCE, 1992 (68) E.L.T. 268. He says in any event the goods were in customs custody and there would be no loss of foreign exchange. The advocate conclude saying that redemption fine and penalty are, in any event, in excess.

3. Shri Sanjeev Sachdeva, JDR says that the second invoice is dated 30-4-1991. The bill of entry was filed only on 8th May, 1991 and the goods were examined on 9th May, 1991. Therefore if the invoice has actually been signed and sent on 30th April, 1991 or a (Jay or two later, it would have reached the appellant well in time for him to produce it before the Customs and to have amended the value in the bill of entry before the goods were examined. The fact that it was not done shows the mala fide intention of the appellant. He says that there is only a minor discrepancy in the lot number in the invoice and that which was found on the lot. The second invoice does not have any lot number at all and if the lot number is the criterion, the second invoice cannot be held to cover the goods. He says that the Additional Collector has dealt with the arguments of the appellant, supported by the claim of Shri Shekri that the incorrect invoice has been sent by error, has been considerably dealt in his order.

4. It is essentially the appellant's contention that it was guided while filing the bill of entry by the value given in the invoice. If the supplier made a mistake in giving the value the appellant should not be penalised for it. This is said to be corroborated by the fact that the supplier has himself reported that he has sent an invoice on 30-4-1901 which was not received here and the fact that lot number did not tally. The goods are seen to have been sent on 21-4-1991 and to have arrived on 3-5-1991 at Jaipur. The invoice dated 6th April, 1991 is seen to have been received on 1-5-1991. There is considerable force in the departmental representative's claim that if the second invoice which is stated to have been issued on 30th April, 1991 was posted shortly after, it would have been received well in time for the appellant

to approach the customs and amend the value. I agree that there is a slight difference in the lot number as quoted in the invoice and what has been found. The difference is found in the first and fourth lot. In the first lot, the invoice says J.K. 83/87/90 whereas it was described as J.K. 83/86/90 on the receipt number of its second and third lots tally. The fourth lot is described as J.K. 88 and in the invoice and JR 88 on the other. But here again, as the DR points out, the second invoice does not indicate any lot number at all. It is not clear what the lot numbers refer to. The weight of the goods up to last gram are seen to tally between the invoice and bill of entry. In view of this similarity, '.'. do not see how the slight difference in lot number supports the appellant's claim.

5. I also do not find it possible to agree with the advocate that the Additional Collector has not dealt with the arguments raised by Shri Shekhri. At the personal hearing, the appellant was represented by Shri Khurana, who is. the firm's Proprietor. Shri J.K. Sekhri had also accompanied him. Now no proceedings had been initiated against the supplier and he therefore had no locus standi to appear. It would be seen that representative of the supplier was present before the Collector to support the claim made by the appellant - he was in fact present as representative of the appellant. It was also the appellant's argument that incorrect invoice has been supplied and it is for this purpose the appellant relied on the statements of Shri Sekhri that wrong invoice has been sent. The Additional Collector in paras 3 and 14 of his order specially considered this plea the incorrect declaration was due to wrong invoice sent by mistake by the supplier. It is therefore, not possible to hold that a plea put forward was not considered.

6. While rejecting the plea of the appellant, the Additional Collector had noted that the plea that the goods were supplied before fixing the price is incredible. I must consider this to be a strong argument. It is hard to believe that a person would place an order for goods totally unseen and without knowing their value or the quality. I agree with Shri Jain where he says that there are bound to be differences in appraising the value, but obviously such a difference would be within a fairly narrow frame. If that were not the case, it would be virtually impossible to have trade in any commodity. Considering the enormous quantity of precious and semi precious stones imported of this country and traded in the world, this plea has

absolutely no force. Again if the importer did not himself know the value of the goods, there was nothing to stop him from asking for examination of the goods before indicating the value on the bill of entry. Such a procedure is prevalent in every Custom House and it is also stated that the importer has spent 30 years in. the field. These factors, along with the fact that second invoice of 30th April, 1991 would in the normal course has been received before the goods were taken up for examination go against the appellant.

7. I also do not find it possible to agree that because there has been no loss of foreign exchange and the goods are not liable for confiscation. The DR has a strong point when he says if the department's action was not initiated, such loss of foreign exchange would have taken place. The advocate's argument is that the Assistant Collector has not specifically indicated what the value was which the appellant ought to have declared. In the second page of his order, he says "Thus the ascertained value of these four lots appeared to be 21612.25 US $ as against the price of 59987.25 US $ declared in the importers invoice filed with the bill of entry. It thus appear that the goods imported by the importers have been grossly over-invoiced." It is on this basis that the proceedings commenced and on this, he has come to a finding.

8. The case law cited by the advocate is distinguishable. The ratio in first case is that an order which is based on assumption and presumption and without discussion and without material on record is not sustainable. In the present case, the Additional Collector has extensively dealt with the appellants' pleas and given his reasons for not accepting them. In the second case, cited by the advocate, this Tribunal had on the facts and circumstances of the case before it, had held that confiscation of the goods for misdeclaration was not sustainable. The Tribunal considered the facts of the case and had found that the wrong goods had been shipped by supplier's mistake; the importer disclosed the fact of mis-declaration before examination of the goods and had requested for export of the goods at the earliest on the ground of wrong supply. These facts clearly are very different from the facts of the present case.

9. Considering the value of the goods and the extent of the incorrect declaration, I do not think that either the redemption fine or the penalty are in excess; I dismiss the appeal.

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