

Diamond Traders Vs. Commissioner of Customs (Airport) Chennai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Apr-09-2009

Judge : Hon'Ble Ms.Jyoti Balasundaram, Vice-President & Hon'Ble Mr. P.Karthikeyan, Member (Technical)

Appeal No. : Appeal No.C/19/2002

Appellant : Diamond Traders

Respondent : Commissioner of Customs (Airport) Chennai

Advocate for Pet/Ap. : For the Appellants: A.K.Jayaraj, Advocate. For the Respondents: M.K.A.K.Mohiddin, JDR

Judgement :

Jyoti Balasundaram

The appellants herein filed Bill of Entry dt. 5.11.2001 for clearance of goods described as 'Cassia broken old crop Anchor brand' imported from Hongkong @ US\$ 575 per MT. Goods were examined and found to be 'Cassia whole'. Goods were seized for misdeclaration of the description. The importers were heard by the Commissioner who rejected the transaction value in view of the misdeclaration of the goods as 'Cassia broken' instead of 'Cassia whole' even as per the description on the bales, and loaded the value to US\$ 910 per MT on the basis of contemporaneous import of identical goods of Chinese origin @ US\$ 910 to 960 per MT. The total assessable value worked out to Rs.11,97,534/- on the above

basis. He confiscated the goods for contravention of provisions of Section 111 (m) with option of redemption on payment of a fine of Rs.2,25,000/- and imposed a penalty of Rs.1 lakh upon the importers. Hence this appeal.

2) We have heard both sides. Contravention of Section 111(m) is established due to the misdeclaration of description of the goods as 'Cassia broken' instead of 'Cassia whole'. However, we agree with the importers that enhancement of the value was not sustainable in the absence of any details as to import of so-called identical goods. The impugned order does not bring out how the goods imported by the appellants are identical to imports of Cassia of Chinese origin by others at or around the same time. Further, it is pertinent to note that agricultural commodity prices (Cassia is agricultural produce) are prone to fluctuation on account of variety, quality, grade, season of produce etc. as accepted by the Tribunal in the cases of Nitee Trading Company Vs CC Chennai, 2003 (87) ECC 795 (Tri.) and Arkay Overseas Vs CC Mumbai, 2004 (167) ELT 468 (Tri.-Del.). We, therefore, set aside the enhancement of value and accept the value declared by the appellants. However, the goods are still liable to confiscation for contravention of Section 111 (m) due to misdeclaration of description. The fine in lieu of confiscation is reduced to Rs.60,000/- (Rupees Sixty thousand only) and the penalty is reduced to Rs.30,000/- (Rupees Thirty thousand only) representing 10% and 5% respectively of the value of the goods, in the light of precedent decisions of the Tribunal.

3) The appeal is thus partly allowed as above.

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