

(2008) 09 SC CK 0108
In the Supreme Court Of India
Case No : Civil Appeal No. 563 of 2003

Commissioner of Customs, Mumbai

APPELLANT

Vs

Mahalaxmi Gems

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Customs Act, 1962 — Section 111, 112, 125, 130E

Citation : (2008) 134 ECC 97 : (2008) 160 ECR 97

Hon'ble Judges : V. S. Sirpurkar, J; Ashok Bhan, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Binu Tamta, for P. Parmeswaran, for the Appellant; Ramesh Singh and Abhishek Verma for Umesh Kumar Khaitan, for the Respondent

Final Decision : Allowed

Judgement

1. Revenue has filed the present appeal u/s 130E(b) of the Customs Act, 1962 (for short, 'the Act') against the final Order No. C- II/1132/WZB/2002 dated 26.03.2002 in Appeal No.C/362/91-Bom. passed by the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai (for short, 'the Tribunal'), whereby the Tribunal has allowed the appeal filed by the assessee-respondent herein.

Facts:

2. M/s. Mahalaxmi Gems, Mumbai (hereinafter referred to as the 'Assessee') filed Bill of Entry No.100136 dated 08.01.1997 for import of Rough Diamonds of CIF US\$ 185662.83 = CIF Rs. 66,83,862.00. The goods were supplied by M/s. Param Diam BVBA, Belgium under cover of invoice No.R-101/97 dated 6.1.1997. The said invoice of the shipper covered 3 lots of rough diamonds supplied at different CIF prices per carat, details of which are as under:

Lot No.	Description	Weight in cts.	Value US p/ct	Amount in US\$
1	Rough Diamonds	23568.7	\$3.85	\$90,739.49
2	Rough Diamonds	32457.98	\$2.65	

\$83,363.64 3 Rough Diamonds 4796.56 \$2.41 \$11,559.70 Total Carats
59823.24 T.US\$ \$1,85,662.83/-

(CIF) = Rs. 66,83,862/-

3. On physical examination, the description and weight of the three declared lots was found fair as per invoice. But on examination, customs authorities were of the opinion that the goods were overinvoiced. The goods were thereafter shown to all the Appraisers at DPCC as well as to the trade panel members approved by the Commissioner of Customs. As per the Appraisers Valuation Report as well as the trade panel Report No. GJC/P/Cus. 96-97/42005 dtd. 10/1/1997, submitted through the Gems and Jewelry Export Promotion Council the ascertained fair value of the goods found as under:

Lot No.	Description	Weight in cts.	Ascertained fair value (CIF) US \$ per cts.
1	Rough Diamonds	23568.7	US \$ 2.50
2	Rough Diamonds	31457.98	US \$ 0.80
3	Rough Diamonds	4796.56	OK i.e. \$ 2.41

4. From the above table, it was concluded that lot No.(1) was overinvoiced by US \$ 31817.74 = Rs. 11,45,439.00 and lot No.(2) was overinvoiced by US \$ 58197.25 = Rs. 20,95,101/-, the invoice value of lot No.(3) was accepted as fair value. The total overinvoicing of the consignment therefore worked out to the extent of Rs. US \$90015 = Rs. 32,40,540/-. The goods were proposed to be confiscated u/s 111(m) of the Act and penal action u/s 112 of the Act.

5. Assessee in its letter dated 29/01/1997 explained the actual position stating that the shipper had before hand informed that they would be sending the goods at reasonable value and asked the assessee to check the value after assortment and if after assortment, value was not found satisfactory, reship the goods back. Assessee also requested the customs authorities not to issue any show cause notice but requested to grant the personal hearing to explain the matter. During the personal hearing on 12/2/1997 assessee reiterated the same points stated in the letter dated 29/01/1997.

6. Commissioner of Customs who is the adjudicating authority in this matter after hearing both the sides and going through the Appraisers Valuation Report and Trade Panel Report ordered confiscation of the goods. However, he gave an option to the importer u/s 125 of the Act to pay a redemption fine of Rs. 2,00,000/- (Rupees two lakhs only) and allow to reship the goods in lieu of confiscation. He also imposed a penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only).

7. Assessee, being aggrieved, filed appeal before the Tribunal. Tribunal by its impugned order has set aside the findings recorded by the Commissioner(Customs) by observing that "the value of the goods that was declared was the transaction value. The genuineness of the invoice that the assessee produced has not been questioned. It has not been alleged that it was fabricated or fake or that any relationship existed between the importer and the

exporter". It was also held that there was no contemporaneous evidence to prove that the goods imported were overinvoiced. The Tribunal, without going into the question regarding the impartiality of the opinion of the two members of the trade panel, observed that they were the competitors. Tribunal, relying upon a judgment of this Court in the case of M/s. Eicher Tractors Ltd., Haryana Vs. Commissioner of Customs, Mumbai, , held that the transaction value would have to be accepted until and unless it is shown by some contemporaneous evidence that the price declared in the invoice was not the correct price.

8. In the present case, the department has failed to show from any contemporaneous evidence that the invoices were either fabricated or fake or that any relationship existed between the importer and the exporter. We entirely agree with the view taken by the Tribunal that the transaction value has to be accepted until and unless it is shown by some contemporaneous evidence that the price declared in the invoice was not the correct price.

9. The Appeal is accordingly dismissed. Parties shall bear their own costs.