IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

<u>APPEAL NO: C/86655, 87036/2017</u>

Arising out of:	Order-in-Original No. MUM/CUS//VRM/ASC/ 04/2016-17 dated 28/02/2017
Passed by:	Commissioner of Customs, Airport Special Cargo, Mumbai

	Appellants – Represented by:
Skantilal & Co. Sanjay K. Shah	Ms. Savita J. Patel, Advocate
Versus	
	Respondent – Represented by:
CC(I) (Airport), Mumbai	Ms. Trupti Chauhan, Assistant Commissioner (AR)

Date of hearing: 28/11/2018
Date of pronouncement: 28/02/2019

<u>CORAM</u>

Hon'ble Shri Ajay Sharma, Member (Judicial)

ORDER NO: A/85422-85423/2019

These appeals have been filed from the impugned order dated 24.08.2017 passed by Commissioner of Customs, Airport Special Cargo.

2. Earlier this matter was listed on 22.10.2018 for deciding the application filed by the Appellant. In the said application learned Counsel for the Appellant submitted that she is not contesting the value of goods and only contesting the redemption fine of Rs.12,50,000/- alongwith penalty of Rs.5,00,000/-. On the said

submissions of the learned Counsel for the Appellant that application was allowed by the Division Bench and the matter was directed to be listed before the Single Member Bench and therefore, this matter has come up today before me for disposal.

3. Today, during the course of hearing, learned Counsel for the Appellant submitted that the learned Commissioner has ordered for confiscation of the goods under Section 111(m) of the Customs Act, 19962 with an option to redeem the same on payment of fine of Rs.12,50,000/- under Section 125 ibid. She further submitted that as per the Government approved valuer the value of the goods in question i.e. rough diamond is only Rs.8,291/- and a reasonable profit margin of 10% into this assessable value cannot make the market value of the goods more than Rs.15,000/-. Therefore, according to her, imposition of redemption fine of Rs.12,50,000/- in respect of goods worth Rs.15,000/- is not sustainable. She also admitted that the aforesaid contention was not raised by the Appellants before the learned Commissioner because they were not expecting such a huge redemption fine. She further submitted that the learned Commissioner has also erred in imposing penalty both on the partners as well as on the firm and the same is not sustainable. The aforesaid submission was also not raised by the Appellant before the learned Commissioner. The learned Authorised Representative on the other hand reiterated the findings recorded in the impugned order and submitted that since the Appellants have not raised the aforesaid submissions before the Commissioner, they are not entitle for the

same at this stage. He prayed for dismissal of appeal filed by the Appellant. The learned Counsel admitted the mistake committed by the Appellant and submitted that one more opportunity may be given so that the Appellant can make these submissions before the authorities below.

4. After going through the impugned order and considering the rival contentions, I find that none of these submissions were raised before the learned Commissioner as a result of which there is no finding on these issues. This calls for remand of the matter back to the Appellate Authority to re-hear the matter and to decide the appeal afresh after considering these submissions of the Appellant in order to arrive at a reasoned decision. Therefore, in the interest of justice, without going into the merits of the matter, I am remanding the matter back to the ld. Commissioner. The ld. Commissioner shall also take into consideration the case laws in respect of the said submissions. In view of the above, the appeal is allowed by way of remand and the Appellant is directed to raise the submissions made herein, before the learned Commissioner without fail, with supporting decisions.

(Pronounced in Court on 28/02/2019)

(Ajay Sharma)
Member (Judicial)

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