

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH - COURT NO. I**

**Customs Appeal No. 55430 of 2023**

(Arising out of Order-in-Original No. 72/2022-23/Simmi Jain/Pr. Commissioner dated 16.03.2023 passed by the Principal Commissioner of Customs, ACC Import, New Customs House, New Delhi)

**Principal Commissioner of Customs,** ..... **Appellant**  
**ACC (Import) Commissionerate,**  
New Custom House,  
New Delhi-110037

Versus

**The Bank of Nova Scotia** ..... **Respondent**  
Scotia Mocatta 91, 3 North Avenue,  
Maker Maxity, Bandra Kurla Complex,  
Mumbai Maharashtra-400051

**APPEARANCE:**

Mr. Rajesh Singh, Authorised Representative for the Department  
Mr. Arihant Tater and Mr. Ashish Jain, Advocates for the Respondent

**WITH**

**Customs Appeal No. 55431 of 2023**

**with**

**Customs Cross No. 50210 of 2024**

(Arising out of Order-in-Original No. 72/2022-23/Simmi Jain/Pr. Commissioner dated 16.03.2023 passed by the Principal Commissioner of Customs, ACC Import, New Customs House, New Delhi)

**Principal Commissioner of Customs,** ..... **Appellant**  
**ACC (Import) Commissionerate,**  
New Custom House,  
New Delhi-110037

Versus

**M/s Derewala Industries Ltd.** ..... **Respondent**  
E-72, E-73, EPIP Zones, Sitapura Industrial Area,  
Sitapura, Jaipur, Rajasthan-302022

**APPEARANCE:**

Mr. Rajesh Singh, Authorised Representative for the Department  
Mr. Anurag Basu, Advocate for the Respondent

**AND**

**Customs Appeal No. 55432 of 2023**

**With**

**Customs Cross No. 50211 of 2024**

(Arising out of Order-in-Original No. 72/2022-23/Simmi Jain/Pr. Commissioner dated 16.03.2023 passed by the Principal Commissioner of Customs, ACC Import, New Customs House, New Delhi)

**Principal Commissioner of Customs,  
ACC (Import) Commissionerate,**

New Custom House,  
New Delhi-110037

**..... Appellant**

Versus

**Shri Yogendra Garg, Director,  
M/s Derewala Industries Ltd.**

E-72, E-73, EPIP Zones, Sitapura Industrial Area,  
Sitapura, Jaipur, Rajasthan-302022

**..... Respondent**

**APPEARANCE:**

Mr. Rajesh Singh, Authorised Representative for the Department  
Mr. Anurag Basu, Advocate for the Respondent

**CORAM :**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING/DECISION: December 04, 2025**

**FINAL ORDER NO's. 51843-51845/2025**

**JUSTICE DILIP GUPTA**

**Customs Appeal No. 55430 of 2023** has been filed by the department to assail that portion of the order dated 16.03.2023 passed by the Principal Commissioner that drops the demand of Customs duty proposed on the Bank of Nova Scotia<sup>1</sup> and also refrains from imposing

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**1 the Bank**

any penalty on the Bank under section 112(ii) of the Customs Act, 1962<sup>2</sup>.

2. **Customs Appeal No. 55431 of 2023** has been filed by the department to assail that part of the order dated 16.03.2023 that has been passed by the Principal Commissioner refraining from imposing penalty upon M/s Derewala Industries Ltd<sup>3</sup> under section 112 (ii) of the Customs Act.

3. **Customs Appeal No. 55432 of 2023** has been filed by the department to assail that portion of the order dated 16.03.2023 passed by the Principal Commissioner that refrains from imposing penalty upon Yogendra Garg, Director of Derewala Industries under section 112 (ii) of the Customs Act.

4. The respondent Bank is a "Nominated Agency" under the Foreign Trade Policy 2009-14 and 2015-20. The Handbook of Procedures provides that exporters may obtain gold, silver, platinum from nominated agencies. The Bank imported bullion from the affiliates of Bank of Scotia and supplied the same to the domestic manufacturers as well as exporters in India, including Derewala Industries.

5. The Bank availed the benefit of duty exemption on import of gold under a scheme called "Export Against Supply by Nominated Agencies" as contained in the Notification No. 57/2000-Cus dated 08.05.2000<sup>4</sup>. One of the conditions for availing the benefit of exemption notification is as follows:

**"Provided further that in the case of import of gold / silver / platinum under the scheme for 'Export Against Supply by Nominated Agencies', the importer executes a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, undertaking to export,**

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**2 the Customs Act**

**3 Derewal Industries**

**4 the Exemption Notification**

either by itself or through other exporters, gold/silver / platinum jewellery or articles, as the case may be including studded articles having gold/silver/platinum content equivalent to the imported gold/silver / platinum within a period of ninety days from the date of issue of gold/silver / platinum to the exporters, and **binding himself to pay on demand duty on quantity of gold/silver/platinum representing the difference between the quantity issued and that contained in the exported jewellery or articles."**

**(emphasis supplied)**

6. In terms of the aforesaid Exemption Notification, the Bank imported duty free gold by executing the prescribed bond solely for the purpose of supplying such gold to eligible manufacturer-exporters, including Derewala Industries.

7. The dispute in the present appeal relates to gold supplied to Derewala Industries under the bullion agreements entered from time to time. Under these agreements, Derewala Industries was required to complete the corresponding export of jewellery within the time limits prescribed under the FTP/HBP and to furnish documentary evidence of such exports. A default could arise only if Derewala Industries failed to complete the exports within the prescribed period and submit supporting export documentation.

8. It is not in dispute that the bonds furnished by the Bank in terms of the proviso to the Exemption Notification were cancelled by the Customs authorities after due verification that the exports had been undertaken by Derewala Industries. The cancellation was based on the export documents furnished by Derewala Industries to the Bank and subsequently supplied by the Derewala Industries to the Customs authorities. These documents included EP copy of the Shipping Bill, the BRC, and the Customs attested invoice evidencing the exports carried out by Derewala Industries.

9. In the present case, Derewala Industries had furnished the requisite Bonds against the five Bills of Entries and, thereafter, the Bank supplied 74 kgs of gold to Derewala Industries on a loan basis. Derewala Industries, in turn, exported 73.986 kgs of gold within 90 days from the date of supply. In support thereof, Derewala Industries furnished to the Bank documentary evidence, including the EP copies of the Shipping Bills, Customs-attested invoices, and the corresponding Bank Realisation Certificates, all of which established that the jewellery manufactured from the gold supplied by the Bank had been exported. For the residual quantity of 0.014 kgs, in respect of which Derewala Industries could not furnish proof of export, the Bank discharged the applicable customs duty with interest. Thus, the Bank complied with its obligations under the FTP/HBP framework as well as the terms governing duty-free gold supplied on a loan basis under the Exemption Notification.

10. In 2016, pursuant to a search conducted at the premises of Derewala Industries and the consequent investigation undertaken by the DRI, it was alleged that Derewala Industries had diverted and sold in the domestic market the duty-free gold amounting to 39.03 kgs procured under the Exemption Notification despite the condition that such gold was to be exclusively used for manufacture and export of jewellery.

11. On the basis of the said investigation, a show cause notice proposing a duty demand of Rs. 99,87,412/- was issued to the Bank, alleging non-fulfillment of the conditions prescribed under the Exemption Notification read with Circulars.

12. Upon adjudication, the demand of Rs. 99,87,412/- proposed on the Bank was set aside. No penalty was imposed on the Bank under section 112(ii) of the Customs Act. However, and a penalty of Rs.

1,00,000/- was imposed under section 117 of the Customs Act which was paid by the Bank.

13. The Department has preferred Customs Appeal No. 55430 of 2023 before this Tribunal against the dropping of the duty demand and the penalty proposed under section 112(ii) of the Customs Act.

14. The relevant portion of the order passed by the Principal Commissioner is reproduced below:

**"6.4. I find that Bank of Nova Scotia has contended that they had obtained all the proof of exports for the consignment exported by DIL and the same were submitted with the Customs authorities. On being satisfied, the bonds executed by them at the time of import were duly cancelled by the Customs authorities.** It was their contention that cancellation of bond by the Customs authorities after verification of due compliance by them buttresses the fact that they had clearly fulfilled all the conditions of Exemption Notification No. 57/2000 read with the Circulars, FTP and HBP and the fact of export has been duly acknowledged by the Custom authorities. The Nominated Agencies execute a bond to the Deputy/Assistant Commissioner of Customs binding themselves to (a) maintain accounts for the gold imported; and (b) to discharge the duty in the event of the exporter not fulfilling his export obligation within the period prescribed under the foreign trade policy. **The discharge of duty is warranted if the exporter has failed to fulfill the export obligation within the period prescribed which is not the allegation against them in the impugned notice.**

**6.5** The noticee cited that CBIC vide Circular No. 23/2018, while addressing the problems being faced by the exporters when Customs call for one to one correlation between the gold procured duty free under Exemption Notification 57/2000 and corresponding export of jewellery which they were of the view was impossible to establish owing to the homogenous nature of precious metals, clarified that neither the provisions of the FTP nor the Exemption Notification 57/2000 and afore-stated Circulars refer to the requirement of a one to one correlation between the gold procured and the jewellery exported.

**6.6. Having gone through the submissions of M/s Nova Scotia, I am in agreement that liability to duty would arise only if the condition of exports of jewellery is violated. This is not**

**the case here as all the proof of exports for the consignments exported by DIL were submitted with the Customs authorities and on being satisfied, the bonds executed by them at the time of import were duly cancelled after verification of due compliance by them. CBIC has also clarified that no one to one correlation between the gold imported and jewellery exported is required.**

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**6.8.** The show cause notice proposes imposition of penalty under Section 112 (ii) of the Act on them. The said Section reads as follows:

“In this context, it is evident that in order to impose penalty on any person under Section 112 of the Act, the goods are required to be held liable for confiscation under Section 111 of the Act. Penalty was imposable when it is shown that the person has done something or omitted to do any act which would render such goods liable for confiscation. Their role or the fact that they were aware that duty free gold was cleared in the domestic market by M/s DIL has not been brought on record. The notice has not invoked confiscation of impugned goods under Section 111 of the Act and thus the proposal to impose penalty under Section 112(b)(ii) of the Act is untenable. Besides penalty under Section 112 (ii) is invokable when there is a demand of duty as its quantum has been fixed in relation to duty sought to be evaded. Neither Section 111 has been invoked nor the duty is liable to be paid hence no penalty can be imposed under Section 112 of the Act.”

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**6.10.** The notice proposes penalty under Section 112 (ii) of the Customs Act, 1962 on M/s DIL and Sh. Yogendra Garg, Director of M/s DIL. For the same reason as discussed in para 6.8 above, Penalty is not imposable under this section on them.

15. Shri Rajesh Singh, learned authorized representative appearing for the department contended that the Bank was required to maintain the accounts of duty free gold and domestically procured duty paid gold in such a manner that duty free gold obtained for the purpose of export of jewellery is clearly accounted for by the export of jewellery. It is for this reason that penalty has been imposed upon the Bank under section

117 of the Customs Act. This cannot be a ground for confirming duty on the Bank. Once the bonds executed by the Bank at the time of import were cancelled by the Customs Authority after proof of export for the consignment exported by Derewala Industries was submitted to the customs authorities, it cannot be alleged that the Bank had violated the conditions of the Exemption Notification.

16. Therefore, there is no error in the finding recorded by the Principal Commissioner dropping the demand.

17. For the same reasons, the imposition of penalty under section 112 (ii) of the Customs Act on the Bank, Derewala Industries and Yogesh Garg has been correctly dropped.

18. All the three appeals are, accordingly, dismissed. The Cross-objections stand disposed.

(order dictated in the open court)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**

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