IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Customs Appeal No. 51766 to 51771 of 2017

[Arising out of Order-in-Appeal No. CC(A) CUS/D-I/EXP/272-277/2017 dated 28.7.2017 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. MMTC Ltd. **Appellant**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:
Shri Amit Jain Advocate for the Appellants
Shri R K Majhi, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing /Decision: 13.2.2018

FINAL ORDER NO. 50681-50686 /2018

Per: B Ravichandaran:

These appeals have been filed against the common Order-in-Appeal No. 272-277 /2017 dated 28.7.2017 of Commissioner (Appeals), New Custom House, New Delhi. The appellant is a Government of India undertaking engaged, among other things, as one of the nominated agencies for import of duty free gold for supply to be used to make jewellery for export out of country. The exemption available to such import is in terms of notification No. 57/2000-Cus dated 8.5.2000 read with Export Import Policy applicable during the relevant time. The appellants have been regularly importing gold availing such provisions and were discharging their obligation in terms of notification, Policy and the bond executed by them. In certain cases, deficiency was found against the appellant for violation of provisions of policy and accordingly, instant proceedings were initiated against the appellant to enforce the bonds executed by them and to impose penalty. The proceedings concluded in various original orders. The original authority ordered enforcement of bond for different duty liability and also imposed penalties in each of the cases. On appeal, vide the common impugned order, Commissioner (Appeals) confirmed the finding of the original authority and rejected the appeals.

2. Learned Counsel for the appellant submitted that they were engaged in regular import of gold, duty free in terms of said notification and have been regularly filing the details to the assessing officer to discharge the obligation of re-export as jewellery by various buyers of gold from them. However, in the case now in dispute the Revenue held a view that non-production of Bank Realisation certificate (BRC) on such jewellery exports, by the appellant is in violation of Policy provision and accordingly, duty

applicable to such imports are to be recovered by enforcing the bond and penalties also were imposed. He submitted that Policy requirement during the material time as given in para 4A.8 stipulates that EP-copy of shipping bill and bank certificate regarding the documents sent for negotiations etc. were the only requirement. Similarly, the circular which is in line with the Policy, also stipulated similar conditions only. However, the Policy underwent certain modification with reference to proof of export and with effect from 1.4.2008, the condition of production of Foreign Exchange Encashment certificate from Bank was also incorporated.

3. In line with the said amendment, Board also issued a circular dated 24.7.2008 incorporating the production of BRC as one of the condition to prove the export. Learned Counsel submitted that as can be seen from the details filed in the present dispute out of 6 imports, 5 are governed by pre-amended provision. The import governed by Bond dated 8.4.09 alone, if at all, will be governed by the amended provisions regarding production of BRC. They have produced such BRC in respect of such goods.

4. He also relied on the decision of Tribunal in ***Bank of Nova Scotia vs. CCE [2009 (233) ELT 260 (Tri-Bang)]*** to submit that there is no authority with Customs to insist on BRC from the nominated agency for import of gold and based on such insistence,

the exemption can not be denied to the nominated importer. The relevant portion of the decision is as below.

> ***"17. A close reading of the above proviso shows that the nominated agency who is the importer, executes a bond undertaking to export the jewellery containing gold equal to the imported gold. In case, the jewellery is not exported within the stipulated period, the importer is under an obligation to pay the Customs duties foregone on the imported gold. This notification does not impose any condition on the importer to ensure realization of the foreign exchange for the jewellery exported. The fact that the gold imported free of duty was given to the second appellant is also not disputed by the Revenue. The second appellant Rajesh Exporters Ltd. had also exported the goods. There is ample evidence to show that the jewellery containing gold equal to the quantity imported had indeed been exported. This fact is also not under dispute. The learned Special Counsel was at pains to convince us that the non-realization of sale proceeds of the exported goods amounts to violation of the conditions of the notification, because the notification has to be read harmoniously along with export/import policy and also the relevant provisions of Hand Book of Procedures. We do not agree with the contentions of the learned special Counsel. On a plain reading of the notification, we do not think that non-realization of sale proceeds amounts to violation of the conditions of notification by the first appellant. There is no allegation that the first appellant colluded with the second appellant and as a result of such collusion the sale proceeds***

were not realized. In other words, when the notification has not stipulated any condition to the effect that the nominated agency should ensure the realization of sale proceeds of the exported goods. We cannot read such a meaning into the said notification. Consequently, we do not hold that the first appellant has violated the conditions of the notification. Therefore, in our view the first appellant is not liable to pay the Customs duty demanded in the impugned order. Further, we reproduce Para (xiii) of Circular No. 24/1998-Cus., dated 20-4-1998 :

> *"Wherever such proof of export is not produced within the period prescribed in the EXIM Policy the Nominated Agencies, shall (without waiting for its recovery from the exporter) deposit the amount of duty calculated at the effective rate leviable on the quantity gold/silver not exported within 7 days of expiry of the period within which the jewellery manufactured out of the said gold/silver was supposed to be exported. The duty so paid by the Nominated Agency shall be reflected in the monthly statement prescribed in Para (x) above. The Nominated Agencies will settle their claim with the exporter at their own level;"*

18. A close reading of the above provision shows that nowhere it is stated that non-realization of sale proceeds will result in demand of Customs duty foregone from the nominated agency."

5. Learned AR submitted that circular dated 24.7.08 of the Board should be treated as clarificatory and is applicable all along. He submitted that when the gold was imported without payment of duty by the appellant, they are bound by condition including Board's circular on import of such gold.

6. We have heard Shri Amit Jain, learned advocate and Shri R K Majhi, learned DR representing the parties and perused the appeal record.

7. Admitted fact is that except in one case, the bond which is involved in the present case relates to the period prior to pre-amended notification. We have perused the bond condition. Nowhere in the pre-amended EXIM Policy or circular the condition of production of BRC by the importing /nominated agencies has been stipulated. Such stipulation apparently was brought in with effect from 1.4.2008 in the amended EXIM Policy which was later followed by the Circular dated 24.7.2008 of the Board. On such plain reading of the provisions, we are satisfied that the impugned order cannot ask for the compliance of the condition which was later on introduced in the Policy for the import / bond executed which was made earlier. We note that as per the submissions made by the learned advocate, the bond condition was never changed even after the amendment of Policy / circular. In such a situation, we find under no basis for

enforcement of condition of bond to collect duty from the appellant. Accordingly, we find no legal justification in the impugned order enforcing the bond and also imposing penalty on the appellant.

8. In view of the above discussion, we note that impugned order is not sustainable. Accordingly, the same is set aside. Appeals are allowed.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)
President

(B Ravichandaran)
Member(Technical)

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