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

Customs Appeal No. 50068 of 2018

[Arising out of Order-in-Original No. Jai-Excus-000-Com-05-17-18 dated 08.9.2017 passed by the Principal Commissioner of CGST & Central Excise, Jaipur]

M/s. Corporation Bank. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
JaipurI

Appearance:
Shri G Tushar Rao, Advocate with Shri Abdul Samad, Authorised Signatory 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: 28.2.2018

FINAL ORDER NO. 50934/2018

Per: B Ravichandaran:

The appellant is aggrieved by the order dated 8.9.2017 of Commissioner of Central Excise, Jaipur. The appellant is a Government owned bank and is one of the nominated agency to import duty free gold for supply to Jewellery manufacturers in terms of Foreign Trade Policy 2009 - 2014. They imported 267 Kgs of gold bars valued at Rs.65,48,95,641/-. The imported gold without payment of duty, was supplied to M/s. Gaurika Gems and Jewel Pvt. Ltd., who is a 100% EOU, for manufacture of jewellery. The appellant also executed the necessary bond for due accountal of import and realization of foreign exchange on jewellery to be manufactured and exported using the duty free gold bars. The dispute in the present case is that the jewellery made out of imported gold bars having not been exported out of country, the appellant as a nominated import agency, is held liable for such violation. The duty free gold was imported during the period December, 2012 to August, 2013. Show cause notice proceedings were initiated against the appellant on 24.1.2017. The case was adjudicated resulting in impugned order.

2. The original authority held that the appellant violated the import conditions and did not produce the certificate of export of finished jewellery and realization of foreign exchange on such export. Accordingly, the appellant were held liable for payment of duty foregone and also the penalty. Accordingly, the original authority confirmed the Customs duty demand of Rs.4,26,67,051/- along with equal amount of penalty under section 114A of the Customs Act, 1962. He also ordered confiscation of imported gold bars. He further imposed the redemption fine of Rs.50,00,000/-.

3. Learned Counsel appearing for the appellant submitted that the imported gold bars were duly accounted for and supplied to the jewellery maker who is a 100% EOU. The gold bars were duly accounted for by the Jewelers and converted into jewellery and removed to the DTA on foreign exchange remittance in terms of various permissions granted by the Development Commissioner as per Foreign Trade Policy 2009-2014. He specifically referred to para 6.9 (b) with para 8.1 of the said policy to emphasis that EOU clearance to DTA on foreign exchange remittance will be considered for fulfillment of positive NFE. Such clearance will also be considered as "deemed export". He also mentioned that for not carrying out a physical export of jewellery out of country, the proceedings were initiated against the EOU (M/s Gowrika) by issue of Show cause notice dated 7.3.2014. Proceedings concluded by order dated 28.5.2015 issued by Commissioner of Central Excise, Udaipur in the said order Commissioner confirmed the Central Excise duty demand of Rs.11,21,54,510/-. He also imposed various penalties under section 11AC of Central Excise Act, and Rule 25 and 26(1) of Central Excise Rules 2002. He also revalued the goods cleared to the DTA. The learned Counsel submitted that the said order covering the gold imported duty free by the appellant and supplied to M/s. Gowrika. It is his case that the nominated bank cannot be again put to Customs duty liability, in these facts and

circumstances of the case. In other words, it is submitted that gold imported duty free has been put to intended purpose and jewellery made out of same has been duly cleared as per approval given by the competent Development Commissioner to DTA on realization of foreign exchange. Such disposal of jewellery in DTA is within the policy provisions of Foreign Trade Policy, 2009-2014. As such, conditions for import of gold bars have been duly fulfilled by the appellant as nominated agency.

4. Learned Counsel strongly contested the present proceedings on limitation. He submitted that the proceedings against EOU in 2014 itself was initiated based on details and other particulars provided by the appellant only. There is no malafide on the part of the appellant and they have filed the due returns and being a Government owned public sector undertaking bank, there is no malafide motive in their action.

5. Learned DR stated that proceedings against EOU and in the appeals are on different set of facts. Manufactured Jewelry by EOU has to be disposed of either by export out of country or on payment of duty when cleared for DTA. As such, the proceedings against the EOU is on that ground. The appellant is liable to fulfill the obligation of the exemption notification read with bond executed at the time of import. Since, gold imported by the appellant without

payment of duty has not been converted into jewellery and exported out of country, the proceedings were correctly initiated against the appellant.

6. We have heard both sides and perused the appeal record.

7. Admitted facts are that the appellant imported duty free gold with a condition that same will be used in the manufacture of jewellery for export. The export of jewellery and foreign exchange realization on such export are crucial for fulfillment of obligations of duty free import. We notice that the Foreign Trade Policy, 2009 -14 applicable to EOU, to whom the duty free gold bars have been supplied by the appellants, have cleared the jewellery to DTA against foreign exchange remittance. The appellant infact is the Bank who arranged the foreign exchange remittance. There is no dispute on this aspect. Para 8.1 of FTP considers such clearance by EOU as deemed export. In this background, we notice that gold imported has been put to use for intended purpose i.e. manufacture of jewellery and thereafter duly disposed of with permission from competent Development Commissioner. The Development Commissioner apparently on consideration of condition and restriction imposed on appellant allowed such clearance to DTA. That being the case, there is no question of duty liability on the imported gold on the appellant. EOU are otherwise also eligible for duty free procurement of inputs.

In the present case, such duty free procurement of gold bars have been effected from another policy concession available to the appellant. In view of these facts and circumstances, we find that Customs duty liability can not be fastened on the appellant as gold has been supplied for intended purpose and after manufacture, duly disposed of, with the approval of competent authorities.

8. In view of the above facts and circumstances, the impugned order is not legally sustainable. Same is set aside. Appeal is allowed.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)
President

(B Ravichandaran)
Member(Technical)

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