

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

Regional Bench - Court No. – I

Customs Appeal No. 30230 of 2021

(Arising out of Order-in-Original No.HYD-CUS-000-25-COM-19-20 dt.12.02.2020 passed by
Principal Commissioner of Customs, Hyderabad)

PH Jewels

D.No. 5-9-235, Shop No. 9&10
Sanali Mall, Abids,
Hyderabad 500 001

.....Appellant

VERSUS

Principal Commissioner of Customs

GST Bhavan, Basheerbagh,
Hyderabad 530 004

.....Respondent

with

Customs Appeal No. 30229 of 2021

(Arising out of Order-in-Original No.HYD-CUS-000-25-COM-19-20 dt.12.02.2020 passed by
Principal Commissioner of Customs, Hyderabad)

Shri Sanjay Agarwal

GPA holder of PH Jewels
D.No. 5-9-235, Shop No. 9&10
Sanali Mall,
Abids,
Hyderabad 500 001

.....Appellant

VERSUS

Principal Commissioner of Customs

GST Bhavan, Basheerbagh,
Hyderabad 530 004

.....Respondent

Appearance:-

Shri Sanjay Agarwal, GPA holder for PH Jewels
Shri M. Anukathir Surya, AR for the Respondent.

**Coram: HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30342-30343/2025

Date of Hearing: 03.09.2025
Date of Decision: 08.09.2025

[Order per: P.V. SUBBA RAO]

M/s PH Jewels and Shri Sanjay Agarwal¹ filed these Appeals to assail the Order-in-Original dated 12.02.2020 passed by the Principal Commissioner of Customs, Hyderabad, deciding the proposals made in the Show Cause Notice dated 31.07.2017² issued by the Directorate General of Revenue Intelligence³ to M/s. Metals and Minerals Trading Corporation Limited⁴ and to the two appellants. The operative part of the order is as below:

“(i) I order for payment of Customs duty of Rs. 73,52,985/- [Rupees seventy three Lakh fifty two thousand nine hundred and eighty five only] on 25 kg of duty free gold, which was diverted/sold by PHJ in terms of section 28 of the Customs Act, 1962 read with the notification no. 57/2000-Cus dated 8.5.2000, as amended;

(ii) I appropriate an amount of Rs. 73,52,985/- [Rupees seventy three thousand fifty two thousand nine hundred and eighty five only] already paid by them towards duty confirmed at (i) above;

(iii) I order for payment of interest, as applicable in terms of section 28AA of the Customs Act, 1962, on the customs duty mentioned at (i) above;

(iv) I appropriate an amount of Rs. 3,26,547/- [Rupees Three lakhs Twenty Six Thousand Five Hundred and Forty Seven only] already paid by them towards interest liability at (iii) above;

(v) I order for confiscation of 25 kg of gold valued at Rs. 7,13,88,200/- under section 111(o) of the Customs Act, 1962 imported without payment of duties under the Notification no. 57/2000- Cus dated 8.5.2000 and diverted/sold in local market by them. However, I refrain from imposition of redemption fine as the goods are not physically available;

(vi) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) on M/s PH Jewels under section 112(a) of the Customs Act, 1962;

(vii) I impose penalty of Rs. 5,00,000/- (Rupees five lakhs only) on M/s. PH Jewels under section 114AA of the Customs Act, 1962 and

(viii) I impose penalty of Rs. 1,00,000/- (Rupees one lakh only) on Shri Sanjay Agarwal under section 112 (a) of the Customs Act, 1962 and

(ix) I impose penalty of Rs. 1,00,000/- (Rupees one lakh only) on Shri Sanjay Agarwal under section 114AA of the Customs Act, 1962.”

2. It is not clear from the operative part of the order as to on who the demand of duty was confirmed but the SCN proposed confirmation of duty

¹ Appellants

² SCN

³ DRI

⁴ MMTTC

and interest on MMTC. The discussion in the impugned order also shows that MMTC had paid the duty confirmed in this order during the investigation on 'the directions of DRI'. It is also clear from the impugned order that MMTC had not contested the SCN as recorded in paragraph 14.1 of the impugned order which recorded as follows:

'Shri M. Amanulla, reiterated that as per directions of the Directorate of Revenue Intelligence, vid letter F.No. DRI/HZU/ENQ -2 (INT) /2017 they have paid customs duty of Rs. 73,52,985/- along with interest of Rs. 3,26,547/- vide Challan Nos. 654441 dated 12.01.2017 and 651159 dated 17.01.2017 respectively. They do not have anything to add and request to pass the order accordingly.

M/s. MMTC further stated that personal hearing is not required.'

3. MMTC has also not challenged the impugned order before this Tribunal.

4. Shri Sanjay Agarwal appeared before us on behalf of both the appellants herein. He submitted that all his efforts to convince MMTC to file an appeal have gone in vain because MMTC recovered the customs duty from PH Jewels. Therefore, PH Jewels bore the entire burden of the customs duty and interest and not MMTC.

5. The facts which led to the issue of the impugned order are that MMTC is one of the agencies nominated agencies which was permitted to import gold duty free and sell it to jewellery exporters who are expected to manufacture jewellery and export it. PH Jewels is one such exporter. Gold so imported is exempted from the whole of duty of customs by Notification no. 57/2000-Cus dated 8.5.2000 subject to the condition that the jewellery manufactured shall be exported. Since the demand of duty in case of failure to export will be on the importer, which is MMTC in this case, while the responsibility for export is on the exporter for whom the gold is imported, MMTC secured itself by asking the jewellery exporters to deposit the duty with them so that if the exporter fails to export jewellery, MMTC can pay the duty. It has been the general practice of all nominated agencies to secure the duty amount by asking the exporter to deposit an amount equal to the duty or ask for a bank guarantee, etc.

6. DRI received information that PH Jewels had diverted the duty free gold into domestic market instead of exporting jewellery made out of it and initiated investigation. It issued summons to Shri Sanjay Agarwal and to Smt. Radhika Agarwal, Proprietrix of PH Jewels and recorded their statements under section 108 of the Customs Act, 1962⁵. This led DRI to conclude that PH Jewels had exported gold jewellery with 25 kg gold content bought from M/s. Kalpataru Jewellers and Exporters Corporation, Hyderabad to fulfill the export obligation against the imported gold and that PH Jewels had diverted imported gold and sold it in the domestic market.

7. Forming an opinion that the gold imported claiming exemption under notification no. 50/2007-Cus could not have been diverted to domestic market and it should only have been used to manufacture jewellery and the export obligation should have been fulfilled by exporting it only, DRI wrote to MMTC asking for details of the gold sold to PH Jewels and then directed MMTC to pay Customs duty with interest which it did.

8. Thereafter, the SCN was issued which culminated in the impugned order.

9. We have heard Shri Sanjay Agarwal appearing for himself as well as for PH Jewels and Shri M. Anukathir Surya, Learned authorised representative for the Revenue and perused the records.

10. The questions to be answered are:

- a) If an exporter exports jewellery manufactured out of domestic gold instead of exporting jewellery made of the imported gold, is it a violation of the notification? Does the notification stipulate that export obligation must be fulfilled by only exporting jewellery made out of the imported gold?
- b) If so, what is the evidence to support the finding in the impugned order that PH Jewels had exported jewellery made from domestic gold?
- c) Can the demand of duty and interest be sustained?
- d) Can the penalties imposed on the appellants be upheld?

11. Notification No.57/2000-Customs dated 08.05.2000 reads as follows:

⁵ The Act

“In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, (52 of 1962), and in super-session of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 144/93-Cus, dated the 28th June, 1993 [G.S.R. 480(E) dated the 28th June, 1996] except as respects things done or omitted to be done before such super-session, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts silver, gold and platinum, falling under heading Nos. 71.06, 71.08 and 71.10 respectively of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India under the scheme specified in column (2) of the said Table, from so much of the duty of customs leviable thereon under the said First Schedule as specified in the corresponding entry in column (4) of the said Table, and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act:-

<i>Sl. No.</i>	<i>Scheme under Foreign Trade Policy</i>	<i>Description of goods</i>	<i>Amount of duty</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
1.	As replenishment under the Scheme for ‘Export through Exhibitions/Export Promotion Tours/Export of Branded Jewellery’ as referred to in Paragraph 4.46 of the Foreign Trade Policy, read with relevant provisions of Chapter 4 of the Handbook of Procedures	(a) Gold	11.85%
		(b) Silver	11.00%
		(c) Platinum	Whole of the duty of customs leviable thereon, which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
2.	Under The Scheme For ‘Export Against Supply by Nominated Agencies’ as referred to in Paragraph 4.41 of the Foreign Trade Policy, read with relevant provisions of Chapter 4 of the Handbook of Procedures	Gold, Silver, Platinum	Whole of the duty of customs leviable thereon, which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

Provided that in the case of import of gold/silver/platinum as replenishment under the Scheme for ‘Export through Exhibitions/Export Promotion Tours/Export of Branded Jewellery’, the importer undertakes to fulfil the conditions of Foreign Trade Policy and relevant provisions of

the Handbook of Procedures, Volume-I and produces such documents as stipulated in the Foreign Trade Policy and the Handbook of Procedures, Volume-I and produces such proof of exports made through exhibitions/export promotion tours, etc, as may be required by the Assistant Commissioner of Customs or the Deputy Commissioner of Customs to satisfy himself with regard to eligibility of the importer for the duty free import of replenishment material.

** * **

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 the Deputy Commissioner of Customs, undertaking to export, 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 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."

12. A plain reading of the notification shows that it nowhere specifies that only the imported gold must be used to manufacture jewellery to export. However, the SCN took this view by reading some directions in CBEC's circular No. 27/2016-Cus dated 10.6.2016 to say that 'exporter shall export jewellery manufactured out of the gold issued to them by the Nominated Agency within 90 days from the date of issue of the precious metal to them, to fulfil export obligation under the above said notification.' The impugned order, likewise read some directions in the CBEC's circular 27/016-Cus into the exemption notification no. 57/2000 and thereby concluded that it is essential that only the imported gold should be used to manufacture jewellery and export.

13. It also needs to be pointed out the export promotion schemes such as this are formulated by the Director General of Foreign Trade in the Foreign Trade Policy⁶. The Handbook of Procedures issued by the DGFT further elaborates these policies. However, these policies themselves cannot grant any exemption from duty. Therefore, the Department of Revenue issues corresponding exemption notifications under section 25 of the Customs Act.

⁶ FTP

The relevant portions of the FTP referred to in both the SCN and the impugned order are as follows:

“In terms of para 4.31 of FTP 2015-20 , Exporter of jewellery can procure duty free input for manufacture of export product. Further, in terms of para 4.34 of FTP 2015-20, Exporter of gold/silver/ platinum jewellery and articles thereof including mountings and findings may obtain gold/silver/platinum as an input for export product from Nominated Agency, in advance or an replenishment after export in accordance with the procedure specified in this behalf” (para 9.3 of the SCN).

14. What emerges from the above is that while the exemption notification does not stipulate that only imported gold should be used to manufacture goods for export, the FTP specifically provides that gold can be procured duty free either in advance or as an replenishment after export. It is only the CBEC's circular, which is in the nature of instructions to the officers by the Board, stipulated that the imported gold must be used only for export.

15. A well settled legal principle is that there is no scope for intendment in taxation. Whatever is the law must be enforced regardless of the consequences. The law in question is the Customs Act, 1962 section 25 of which empowers the Central Government to issue exemption notifications. Therefore, the exemption notifications issued by the Government are in the nature of subordinate legislation and are part of the law. It may not be out of place to mention here that every notification which is issued is place with a note before both houses of Parliament and the Committees of Subordinate Legislation of both houses examine the notifications and at times direct some changes to be made.

16. The circulars issued by the CBEC, by contrast, are in the nature of instructions to the departmental officers. These cannot modify a notification or add conditions to it.

17. Neither the SCN nor the impugned order says that it is a condition of the exemption notification that only the imported gold must be used for export.

18. We therefore, answer question (a) in paragraph 10 above in favour of the appellants. The questions (b), (c) and (d) therefore, become irrelevant and need not be answered. The SCN was issued under the misconception

that the CBEC circular no. 27/2016-Cus dated 10.06.2016 had to be read into the notification and therefore jewellery must be exported only out of imported gold. The impugned order was also issued under the same misconception. The impugned order therefore, cannot be sustained and need to be set aside.

19. At this stage, we need to decide about the duty and interest which were paid by MMTC and which were appropriated in the impugned order. Since we have found that no duty needs to be paid and the impugned order needs to be set aside, the duty and interest need to be refunded. Although MMTC paid the duty and interest, PH Jewels claims that it had borne the duty and interest. If that be so, PH Jewels can claim refund of the duty and interest from the department under section 27 of the Act which permits both persons who paid the duty or interest and the persons who have borne the duty or interest to claim refund. Needless to say that the appellants would also be entitled to refund of any pre-deposit made as a condition for these appeals.

20. In view of the above, we set aside the impugned order and allow both the appeals with consequential relief to both the appellants, as above.

(Pronounced in the Open Court on 08.09.2025)

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

(ANGAD PRASAD)
MEMBER (JUDICIAL)