

Mmtc Ltd. and anr. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-07-2000

Reported in : (2001)(95)LC103Tri(Delhi)

Judge : J Balasundaram, S T G.R.

Appellant : Mmtc Ltd. and anr.

Respondent : Cc

Judgement :

1. All the above six appeals involve a common issue and are hence heard together and disposed of by this common order. The details of the first four appeals filed by M/s. M.M.T.C. Ltd. are as under: SL. No. Appeal No. Adj. Order dated Duty demand Penalty

1.

50/98 29.9.1997 Rs. 34,80,000/- Rs. 5,00,000/- 2.

51/98 29.9.1997 Rs. 29,00,000/- Rs. 2,00,000/- 3.

52/98 30.9.1997 Rs. 36,74,598.35 Rs. 10,00,000/- 4.

53/98	5.11.1997	Rs.	29,00,000/-	Rs.	2,00,000/-
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Appeal No. C/478/98-C has been filed by the Revenue against the order in original

No. ACU/DS/13/97 dated 30.8.1997 whereunder the Commissioner of Customs, New Delhi has dropped the duty demand of Rs. 7,07,01,428/- raised on M/s. M.M.T.C. Ltd. and has dropped penal action proposed against M/s. MMTC.2. The brief facts of the case are that M/s. MMTC is a Public Sector Undertaking of the Government of India. Under the Export and Import Policy of the Government, as framed from time to time, Schemes were formulated whereby jewellery manufacturing units were permitted to import primary gold of 0.995 fineness for the purpose of manufacture and export of gold jewellery, subject to certain value addition norms.

Such units were permitted to set up manufacturing facilities within the specified Export Processing Zones or in Special Export Oriented Complexes subject to these units being 100% EOUs. Para 88 of the Ex-aim Policy 1992-97 deals with the schemes for export of gold/silver jewellery and articles. Para 88 is divided into clauses A to G and each clause governs a different scheme. The broad outlines of the Scheme are as under: A. Scheme for export of gold/silver jewellery and articles against gold/silver supplied by the foreign buyer.

B. Scheme for export of gold/silver jewellery and articles sale at approved exhibitions.

C. Gold/Silver and Platinum jewellery and articles Export Promotion and Replenishment Scheme.

D. Scheme for advance licence for gold and silver jewellery and articles.

E. Scheme for export of gold/silver and platinum jewellery and articles from Export Oriented Unit complexes.

F. Scheme for import of gold of above 18 carats directly by units situated in DTA under replenishment.

G. Scheme for import of gold of above 18 carats on pre-export basis for export production by units situated in DTA under import licence.

3. Pursuant to the above Scheme, a number of manufacturers/exporters set up units in the NOIDA EPZ. Under the Scheme, M/s. MMTC Ltd was a nominated agency which could also import goods including gold for supply of the same to exporting units of the EPZ for manufacture and export as per terms and conditions of the EXIM Policy and as per Customs Notification No. 177/94 which granted exemption from payment of duty on goods such as raw materials, components, etc. imported into India by Gem and Jewellery units for manufacture of Gem and Jewellery for export out of India or for the promotion of export of gems and jewellery, subject to certain conditions and the notification was also made applicable to silver and gold imported by M/s MMTC and SBI for being supplied to Gem and Jewellery units in EPZ under the Scheme for export of gold and silver jewellery and articles. M/s. MMTC filed bills of entry for import of gold which was issued to four units approved for manufacture and export of gold jewellery namely M/s. Amit Jewellers, M/s. Goldex, M/s. Zevarth Overseas and M/s. Unique Jewellery. The gold imported by M/s. MMTC and supplied to the above mentioned four units was not utilised for manufacture and export of jewellery/articles which was in contravention of the condition of Notification No 177/94 and the EXIM Policy and the bond executed both by M/s. MMTC as well as by the individual units. Therefore, show cause notices were issued proposing recovery of Customs duty from M/s. MMTC Ltd. and proposing imposition of penalty on M/s. MMTC as well as penal action against the four units, the details of the notices are as under:

SL. No.	Appeal No	Show cause	Quantity of Unit	to which Duty demand
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1.

C/A 50/98 16.1.1997 12kgs M/s. Amit Rs. 34,80,000 2.

C/A 51/98 Nil 8kgs M/s. Goldex Rs. 29,61,750 3.

C/A 52/98 16.1.1995 9.986 kgs M/s. Zevartth Rs. 36,74,598.35.P 4.

C/A 53/98 15.10.1996 10kgs M/s. Unique Rs. 29,00,000 4. The Noticees were adjudicated vide four separate Adjudication orders and the Commissioner confirmed duty demands and imposed penalties as set out in the opening paragraph of this order. Hence four appeals have been filed by M/s. MMTC Ltd.

Shri Manoj Kumar has filed appeal against imposition of penalty vide adjudication order dated 4.11.1997.

5. The subject matter of Appeal No. C/478/98 filed by the Revenue is the dropping of proceedings against M/s. MMTC Ltd. in respect of import of 180 kgs of gold bars against 22 bills of entry filed from 5.1.1991 to 23.6.1994 claiming exemption from duty under Customs Notification No. 3/88 dated 14.1.1988 and supplied to Export Oriented Units set up in Special Export Oriented Complexes at Jhandewalan for the purpose of use in the manufacture of jewellery for export out of India, initiated for non-utilization of the gold for the above purpose.

6. We have heard Shri M. Chandrasekharan, learned Senior Advocate appearing along with Shri Sanjay Grover, learned Advocate for M/s. MMTC Ltd; Shri Rajesh Kumar, learned Advocate for Shri Manoj Kumar Soni and Shri L.P. Asthana, learned Advocate for the Revenue.

6A. For better appreciation of the issue in dispute, it is necessary to reproduce Notification No. 177/94-Cus. dated 21.10.1994: Exemption to specified goods for use in export of gem and jewellery. In exercise of the powers conferred by Sub-section

(1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in Annexure I to this notification (hereinafter referred to as the said goods), when imported into India by the gem and jewellery units set up in an Export Processing Zone or in a Free Trade Zone specified in the Annexure II of this Notification (hereinafter referred to as the Zone), for the manufacture or packing of gem and jewellery for exports out of India, or for the promotion of exports of gem and jewellery, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from the whole of the additional duty, if any, leviable thereon under Section 3 of the said Customs Tariff Act, subject to the following conditions, namely:

(1) the importer has been authorised to establish a manufacturing unit in the Zone for the purposes specified in this notification;

(2) the importer is covered, wherever required, by a general or specific permit issued by the Reserve Bank of India;

(3) the importer has been granted necessary licence for the import of the said goods;

(4) the importer executes a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs binding himself to (i) bring the said goods into his unit and use them within the Zone for the purposes specified in this notification; (ii) dispose of the said goods or the gem and jewellery manufactured or packaged in the unit or the waste arising out of such production or packaging in the manner as may be prescribed in the Export-Import Policy and in this notification;

(5) the importer shall maintain a proper account of import, consumption and utilisation of the said goods and of the exports made by him and shall submit such account periodically to the Assistant Commissioner of Customs;

(6) the importer satisfies the Development Commissioner of the Zone that the goods so imported have been used for the purposes specified in the notification or for any other purposes specified in Export-Import Policy;

(7) the Assistant Commissioner of Customs, may subject to such conditions and limitations as may be imposed by him and subject to the provisions of Export-Import Policy (i) permit the said goods or goods manufactured or packaged to the unit to be transferred or supplied to another unit in the same Zone; (ii) permit re-export of dead-stock or broken stones upto 5% of the value of import of such stones;

(8) gem and jewellery, including the rejects, manufactured in the same Zone, shall not be brought to any other place in India (that is to say, the Domestic Tariff Area) for whatever purpose: Provided that scrap, dust or sweepings of gold arising in the manufacturing process may be forwarded to the Government Mint and the importer for conversion into standard gold bars and return to the same Zone in accordance with the procedure specified by the Commissioner of Customs in this

regard;

(9) in the event of a unit ceasing its operation, gold, other precious metals, alloys, gem and material for the manufacture of jewellery shall be handed over to the Agency, nominated in this behalf by the Government of India in the Ministry of Commerce;

(10) the Assistant Commissioner of Customs may allow, subject to the fulfilment of conditions specified in this notification, the lost percentage of gold specified in column

(2) of the Table given below during the manufacture of jewellery of the description specified in the corresponding entry in column

(1) of the said Table.

Description	of	jewellery	Percentage	of	wast-	ages
(1)						(2)

A. Plain gold jewellery articles un-studded with Upto 2% of content in minimum value addition of 10% or more (on jewellery by weight gold content plus waste) B. Studded gold jewellery and articles with value addition (on gold content plus wastage) as follows: (i) value addition upto 25% Upto 3% (ii) value addition above 25% and upto Upto 5% 40% (iii) value addition above 40% and upto Upto 7% 50% (iv) value addition over 50% Upto 10% Gold mountings and findings used in the plain/studded gold jewellery with value addi- tion as follows: C. Gold mountings and findings used in the plain/studded gold jewellery with value addi- tion as follows: (a) value addition above 15% and upto Upto 3 percent of the 40% gold content by (b) value addition above 40% and upto Upto 5 percent of the 50% gold content by (c) value addition over 50% Upto 8 percent of the D. Plain/studded silver jewellery and articles with value additions of silver contents/wastes as follows: (a) value addition above 25 per cent and Upto 5 percent of sil- upto 40 per cent ver content by weight (b) value addition above Upto 7 percent of sil

Explanation: (a) the wastage for mountings and findings is admissible only when such mountings and findings are manufactured from imported gold and are exported as such; and b) the wastage norms for gold jewellery given under the categories A, B and C of the aforesaid Table shall apply mutatis-mutandis to the export of platinum/studded jewellery and articles.

(i) by air freight through the airports specified in Annexure-II to this notification; and in accordance with such procedure as may be specified by the Commissioner of Customs; (12) gem and jewellery manufactured in the said Zone may be supplied to the retail outlets or show rooms set up in the departure lounge at international airports at Delhi and Bombay in accordance with the Import and Export Policy for sale to a tourist as defined in the Baggage Rules, 1994, leaving India in accordance with the procedure specified by the Commissioner of Customs.

Explanation. For the purposes of this notification. "Export-Import Policy" means the Export and Import Policy, 1st April, 1992 - 31st March, 1997, published under the Ministry of Commerce Public Notice No. 1-1TC (PN)/92-97, dated the 31st March, 1992, as amended from time to time.

(13) gem and jewellery manufactured in the said Zone and sold to a foreign bound passenger may be transferred in accordance with the Import and Export Policy to the retail outlets or showrooms set up in the departure lounge or customs "warehouse at international Airports specified in the Annexure-II to this notification for being handed over to the said passenger for the purpose of export, as per procedure specified by the Commissioner of Customs in this regard.

2. Notwithstanding anything contained in the first paragraph, the exemption contained therein shall also apply to silver and gold falling under Heading No. 71.06 and 71.08 respectively of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) imported by the Minerals and Metals Trading Corporation of India Limited and the State Bank of India for being supplied to the gem and jewellery units in the said Zone under the scheme for export of gold and silver jewellery and articles from the Export Processing Zone as specified in paragraph 88 of the Export and Import Policy, 1st April, 1992 -31st March, 1997, read with Chapter VIII

of the Handbook of Procedures, Volume I, 1st April, 1992 - 31st March, 1997, of the Government of India in the Ministry of Commerce: Provided that where gold is imported on behalf of a jewellery unit, the exemption shall apply only if (a) the procedures as may be specified by the Commissioner of Customs are followed by such a jewellery unit; and (b) the conditions stipulated in the first paragraph are complied with by such a jewellery unit.

3. (1) The notifications of the Government of India in the Ministry of Finance, Department of Revenue, specified in Annexure-III to this notification are hereby rescinded.

(2) Notwithstanding such rescission, anything done or action taken under the notifications so rescinded shall be deemed to have been done or taken under the corresponding provisions of this notification.

2. Captive power plants, including captive generating sets and their spare parts, fuel, lubricants and other consumables for such power plants and generating sets as recommended by the Board of Approvals.

8. Tools, jigs, gauges, fixtures, moulds, dies and instruments and accessories and spare parts thereof.

9. Prototypes, technical and trade samples for development and diversification.

11. Goods re-imported within one year of the date of exportation for reexport after repairs or remaking.

12. Goods re-imported within one year from the date of exportation from Zone due to the failure of the foreign buyer to take delivery.

Name of the Zone Exports through Air-ports

1. Santacruz Electronics Export Processing Sahar Zone 2. Cochin Export Processing Zone Trivandrum/Calicut/ 6. Surat Export Processing Zone Sahar

Note: The Zone shall comprise of places bearing survey numbers and enclosed by boundaries as may be specified by the jurisdictional Commissioner of Customs in a Public/Trade Notice, issued in this behalf.

(Notification No 177/94-Cus. dated 21.10.1994 as amended by Notification No. 195/94-Cus. dated 6.12.1994; Notification No. 101/95-Cus. dated 26.5.1995, No. 115/95-Cus. dated 8.6.1995; No. 117/95-Cus. dated 12.6.1995 and No. 170/95-Cus. dated 26.12.1995) 6B. We also reproduce the relevant extract of Notification No. 3/88 which arises for interpretation in the Revenue's appeal: Notwithstanding anything contained in paragraph 1 of this notification, the exemption contained therein shall also apply to silver and gold falling under Heading 71.08 imported by the Minerals and Metals Trading Corporation of India Ltd. and the State Bank of India for being supplied to the gem and jewellery units in the said zone under the scheme for export of gold/silver and platinum jewellery and articles from Export Processing Zones (EPZs) and from Export Oriented Unit (EOU) complexes specified in paragraph 88 of the Export and Import Policy, 1st April, 1992-93 March 1977 (sic) read with Chapter VIII of the Handbook of Procedure Volume I, 1st April, 1992-31st March, 1997, of the Government of India, in the Ministry of Commerce.

Provided that where gold or silver is imported on behalf of a jewellery unit, the exemption shall apply only if- (a) the procedure as may be specified by the Collector of Customs is followed by such a jewellery unit; and (b) the conditions stipulated in paragraph 1 of this notification are complied with by such a jewellery unit.

7. A plain reading of the above Notification makes it clear that the benefit of exemption from payment of duty is not available to gold imported by M/s. MMTC Ltd. if conditions of the proviso to para 2 of the Notification are not complied with. It

is nobody's case that gem and jewellery units fulfilled the requirement of manufacture and export of gold and jewellery articles from the export processing zones.

Therefore, duty liability definitely arises. The only argument that is canvassed before us is that the liability cannot be fastened upon M/s.

MMTC as it is not the importer, but only the supplier of imported gold to Gem and jewellery units. We see no merit in this argument. In all the cases before us, it is M/s. MMTC that filed the bill of entry for import of gold. Therefore, M/s. MMTC cannot escape the responsibility cast upon the importers and the fact that the gold was not meant for use by M/s. MMTC itself but was supplied to various units, cannot and does not alter the legal position that M/s. MMTC is the importer of the gold in question. The Scheme under which M/s. MMTC was operating yokes M/s. MMTC with the Gem and jewellery units and fulfilment of condition of manufacture and export of jewellery/articles by the said units is necessary in order that M/s. MMTC may avail of the benefit of duty free import of gold. Under the Scheme, dual role has been assigned to M/s.

MMTC namely that of importer-cum-supplier. Further, as per the provisions of Rep. Circular No. 22/98, M/s. MMTC has responsibility/continuing obligation to monitor the activities of the exporting units and to ensure export of gold/jewellery within a stipulated period of time following which M/s. MMTC has to inform the Customs authorities and to levy penalty on the unit for extension of period on expiry. M/s. MMTC was charging commission of approximately 0.88% for their services. We also notice that M/s. MMTC supplied gold on loan basis only on the strength of 'issue applications' filed by the respective units and such applications are not the documents prescribed under the Scheme for the purpose of release of fixed quantities of gold to the units. It is also significant to note that the bill of entry cited in the applications is that of M/s. MMTC and the issue applications do not refer to any other bill of entry. The Scheme provides for issue of gold by M/s. MMTC to the units only on the strength of bill of entry filed by the unit and duly assessed. M/s.

MMTC had also executed bond with NEPZ Customs under the Warehousing Provisions of the Customs Act and had undertaken to satisfy the customs authorities that the gold imported by them will be utilized for export as per scheme of export of gold jewellery by units in the EPZ and they were also under an obligation to pay the Customs duty and penalty chargeable on such goods, together with interest.

8. In the light of the above discussion, we hold that duty demand against M/s. MMTC Ltd. is sustainable. Penal action against M/s. MMTC is also warranted. However, having regard to the totality of the facts and circumstances of the case, we reduce the penalty imposed upon the M/s. MMTC as under: 9. Penalty on Shri Manoj Kumar Soni, partner of M/s. Unique Jewellers is sustainable; however, on the totality of the facts and circumstances of the case including the fact that he was one of the partners of the unit, we reduce the penalty imposed upon him to Rs. One lakh. C/Appeal No. 458/98-NB is thus partly allowed.

10. Appeal No. C/478/98-NB filed by the Revenue is allowed by confirming the duty demand of Rs. 7,07,01,428/- on the appellant.

Penalty of Rs. 25 lakhs is imposed upon M/s. MMTC in this case. The appeals are disposed of as above.

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