

Mmtc Ltd. Vs. Cc (Exports)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-01-2006

Reported in : (2006)(109)ECC547

Judge : R Abichandani, M T K.C.

Appellant : Mmtc Ltd.

Respondent : Cc (Exports)

Judgement :

1. The appellant (Metal and Mineral Trading Corporation Limited (MMTC)) challenges the order made by the Commissioner (Exports) on 23.12.2003 confirming the demand of Rs. 84,18,550/- in respect of 23 kgs. of gold which was imported by the appellant and transferred to M/s Bhola Ram Girdhari Lal (BRGL) but which was not utilized for discharge of export obligation in terms of the notification No. 177/94-Cus.

2. The appellant had as per the scheme formulated under para 88 of chapter 8 of the EXIM Policy of 1992-97 imported gold for supply to the approved gold jewellery manufacturing units in Export Processing Zone (EPZ) and Domestic Tariff Area (DTA). The appellant was free to supply gold to such unit on loan or outright sale basis subject to the condition that the export of jewellery, made out of such gold was made within three months from the date of such loan or sale.

2.1 As per the REP Circular No. 22/88 dated 15.06.1988, penalty equivalent to 10% of the price of gold could be imposed by Metal and Mineral Trading Corporation Ltd. (MMTC) in case export was not made within three months or within the extended period of further three months. Third extension was not allowable to such defaulter who would become ineligible for any further loan /purchase of the duty free gold from the appellant for export as jewellery.

2.2 The appellant was eligible for exemption from custom duty on import of such gold under Notification No. 258/87-Cus dated 02.07.1987 and notification No. 177/94-Cus dated 21.10.1994. The appellant had set up a bonded warehouse under Section 58 of the Customs Act, 1962 in Noida Export Processing Zone (NEPZ) and had executed bond under Section 59(2) of the said Act. The appellant as a primary importer, had also executed a bond, undertaking to export gold jewellery out of such import within the stipulated period. The appellant was required to maintain a proper account of import consumption /utilization of gold under the said scheme. After July 1996, the units were required to file ex bond bill of entry in their own name while obtaining the gold by the appellant.

In the event of failure of the exporter to discharge its obligation within the stipulated period, the appellant was responsible to retrieve the gold from such unit.

3. The appellant had given gold on loan basis to M/s BRGL during 08.07.1994 to 05.12.1994 under its "associate scheme" for export. The amount of custom duty involved in respect of such gold was Rs. 84,18,550/-. By its letter dated 21.06.2005, the appellant informed the Assistant Commissioner of Customs, NEPZ that the time limit for export of 23 kgs. of gold loaned to M/s BRGL had expired and that the unit was not functioning satisfactorily and had failed to fulfill the export obligation under the MMTC gold loan scheme. Thereafter, during the stock verification conducted on 29.6.95 it was found that the entire quantity of 23 kgs. of gold was missing from the unit. In its statement, the Prop, of the unit Shri Girdhari Lal stated that he had taken the said 23 kgs. gold out of NEPZ without permission of the Customs and that he had used it for manufacture of jewellery. Out of the said 23 kgs. gold, 15 kgs. was exported from his DTA unit through MMTC and 8 kgs. was given to one Shri Rajindra Prashad Soni, Prop. of Shashi

Jewellers from whom he had taken gold on loan basis. In his statement dated 28.07.1995 Shri Girdhari Lal admitted that his DTA unit had defaulted in exporting gold jewellery out of the gold received from MMTC on loan basis and the default was covered up by exporting gold jewellery made out of the duty free gold i.e. the said 23 kgs. of gold received from the appellant for his NEPZ unit.

4. As per the condition in the exemption notification jewellery made out of the gold imported under the scheme by the appellant was required to be exported within the stipulated period. The MMTC as a holder of private bonded warehouse failed to fulfill the terms of the bond executed under Section 59(2) of the Act. According to the revenue even after the transfer of the gold to M/s BRGL the appellant continued to be liable to pay customs duty leviable on the said gold in terms of Section 72(d) of the Act. A show cause notice therefore came to be issued on 28.10.99 to the appellant and its officials asking them as to why the conditions of the bond executed by the appellant should not be invoked and the custom duty amount of Rs. 84,18,550/- on 23 kgs. of gold should not be recovered under Section 72(d) and 143 of the said Act and penalty imposed under Section 112 and 114(A) of the Customs Act.

5. According to the appellant, its liability of due accountal of the gold imported terminated when the gold was supplied to the approved jewellery unit. It had duly informed the customs department about the default of the unit and the customs department had proceeded against the defaulter by issuing letter dated 21.6.95. It was contended in their reply by the appellant that in terms of paragraph 2 of the notification No. 258/87 and notification No. 177/94-Cus the appellant was not required to monitor the fate of the gold once it was supplied against assessed Bill of Entry after debiting the bond. It was also contended that the notification No. 258/87 and No. 177/94 did not provide for execution of bond in respect of any liability to pay duty in cases where gold was transferred to another person and was to be covered by a bond executed by the transferee. According to the appellant, once the gold safely reached in the NEPZ warehouse, the bond executed by the appellant with Assistant Commissioner, Air Cargo stood discharged and was not enforceable. Duty cannot be recovered from MMTC as the gold was cleared from bonded warehouse against valid custom document and no shortage was noticed

at NEPZ. It was also contended that the duty was not correctly calculated and the duty payable worked out to Rs. 9,20,000/- only.

6. The Commissioner on the basis of the material on record came to a finding that during the period between July, 1994 and December, 1994, 23kgs. of gold was issued to M/s BRGL, a jewellery unit located in NEPZ. It was held that the appellant being a primary importer had executed a bond with the Assistant Commissioner, Air Cargo undertaking to export jewellery or articles equivalent to the entire quantity of gold originally imported duty free. The guidelines formulated by MMTC for issue of gold to importers categorized them as associates and non-associates. The Associates were allowed to draw gold from the appellant on loan upto a maximum quantity of 20 kgs. without any bank guarantee. In the case of an associate operating in domestic tariff area, other co-lateral security was taken. However, in case of an associate operating under NEPZ, no other collateral security was taken, as the gold was presumed to be safe. In case, the associate failed to discharge the export obligation within the prescribed period, the appellant was responsible for retrieving the gold delivered. Under the notification No. 177/94-Cus the appellant the nominated agency was also liable to pay duty on the imported gold. On this basis, it was held that the appellant was obliged to ensure export of gold given to the units under its associates scheme. It was observed that on the basis of investigations, two main allegations were made against the MMTC, namely, that MMTC and its officials colluded with the jewellery unit in NEPZ in clandestinely removing the 23 kgs. of gold instead of using it for discharging export obligation, and that, even otherwise, MMTC was liable to pay the duty on gold imported duty free since it had not been utilized for fulfillment of export obligation. It was held that the exemption notification clearly provided that in case of default in discharge of export obligation, the importer i.e. the appellant was liable to pay duty leviable on the imported gold. The liability ceased only when the export was completed and the export proceeds were realized. In the present case, the exports were on behalf of the appellant and the proceeds were being remitted to it directly. The gold was only being given on loan to the associate units until the export had been completed. The liability in respect of the gold given on loan continued with the appellant until export obligation was discharged.

The obligation did not cease merely upon the gold being warehoused in the private bonded warehouse of the jewellery unit. Even the appellant had admitted its liability in its letter dated 21.6.1995 addressed to the Assistant Commissioner in which it was stated that the time limit for export of gold jewellery had expired and the unit had failed to fulfill the obligation of the appellant's gold loan scheme and that the customs "are aware that the liability of MMTC also exists for payment of customs duty in terms of the bond executed by them". It was found that the goods were clandestinely removed. However, the recovery of customs duty was sought to be made for non-discharge of export obligation and not merely for improper removal from the warehouse for which a separate show cause notice was issued on 21.5.1996 to M/s BRGL.

It was held that notification No. 177/94-Cus dated 21.10.1994 cast a continuing obligation upon the importer to use the duty free imported material for discharge of export obligation and the importer remain liable to fulfill all the conditions of the notification until they were discharged. The appellant was, therefore, held to be liable for payment of duty on 23 kgs. of gold which was not utilized for export of gold jewellery. The claim for concessional rate of duty under the notification No. 80/97-Cus dated 21.10.1997 was rejected on the ground that the clearance of 23 kgs. of gold was effected between July 1994 to December 1994 and therefore, the benefit of the notification could not be given to the appellant with retrospective effect.

7. It was contended by the learned Counsel on behalf of the appellant that once the gold was transferred from IGI Airport to the bonded warehouse of the appellant at NEPZ, the compliance with the bond executed by the appellant with the Assistant Commissioner IGI, Airport was completed because it was only a transit bond. It was also argued that the Re-export bond executed by the appellant should be treated as a transit bond because the procedure did not contemplate any other type of bond making the appellant liable to pay duty even after the compliance with the transit bond. It was also contended that the transferee unit had executed a bond as a result of which the liability of the appellant in respect of the said gold ceased by virtue of the proviso to Section 59(3) of the said Act. It was argued that prior to the amendment of notification No. 177/94 by notification No. 11/98, two

circulars of the Board (No. 38/96-Cus dated 9.7.1996 and Circular No.27/97 dated 8.7.1997) clearly cast liability for payment of duty on the units in the export processing zones. Only after the amendment in the notification No. 177/94 by notification No. 11/98, liability was cast on the appellant nominated agency. It was contended that no clandestine removal had taken place after the goods were supplied with the consent of the customs authorities to the transferee and that the liability to pay duty for non discharge of the export obligation was on the exporting unit and not on the appellant, because, it is the transferee who was required to export as per paragraph 2 of the notification No.258/87. It was also submitted that the circular No. 38/96 and 27/97 and the amendment of notification No. 177/94 by notification No. 11/98 were not brought to the notice of the previous Bench that had decided the earlier case against the appellant on a similar issue.

8. The learned Authorised Representative for the department supported the reasoning and findings of the Commissioner in the impugned order and contended that the appellant had never challenged the validity of the bond which spelt out its liability to pay duty in respect of the gold imported under the scheme on non-fulfilment of export obligation.

It was submitted that under the scheme the appellant continued to be liable even when the gold was transferred on loan basis under the associate scheme. It was submitted that the bond executed by the unit was not of the nature contemplated by Section 59(3) and did not absolve the appellant of its liability. That bond was a general bond of the unit for raw material meant for undertaking export and did not contain provision regarding goods loaned by the appellant to the unit. Since the goods were not accounted for, the appellant was liable under Section 72(d) of the Act. It was submitted that the appellant was liable under paragraph 2 of the notification No. 177/94 dated 21.10.1994, and the notification No. 258/87 dated 02.07.1987 in respect of the clearance is allowed during 08.07.1994 to 05.12.1994. The appellant had executed the bond accepting the said liability reflected in paragraph 2 of the notification. It was submitted that the terms and conditions of the bond executed agreeing to pay custom duty with interest in case of breach, became part and parcel of the conditions of the exemption notification. Relying on the decision in *Pratibha Syntex Ltd. v. Union of India* post importation

condition in an exemption notification was not fulfilled, the department was empowered to recover the duty escaped, in terms of Section 12 of the said Act. It was submitted that merely because notification did not provide for obtaining a bond or a bank guarantee for recovery of duty, the obligation to pay the duty, when the conditions of the notification was violated, did not abate. It was also submitted that the notifications in question cast a continuing obligation on the appellant and that under para 2 of the notification, provisions of paragraph 88 of the EXIM Policy read with Chapter VIII of the Handbook of Procedures 1992 -1997 were incorporated by reference.

Under the policy, the appellant could supply gold to approved gold jewellery manufacturing-export units set up under the scheme in accordance with the procedure specified from time to time. Under para 15(2) of the Handbook of Procedures it was provided that before clearance of each consignment of gold, MMTC shall execute a bond to export gold jewellery equivalent to the entire quantity of gold imported. This para also provided that the nominated agency (the appellant) shall undertake to pay the customs duty leviable on that quantity which was proved to have been not exported. It was submitted that the liability to pay duty on the imported goods did not ceased since the export obligation was not fulfilled. In the Re-export bond executed by the appellant under the notification No. 177/94 the appellant had undertaken to pay duty of customs leviable on the goods as are not used for manufacture of jewellery for export. It was submitted that the bond under Section 59(2) executed by the appellant contemplated that it would continue in full force notwithstanding the transfer of the said goods warehoused under this bond to another warehouse. The learned Authorised Representative for the department further submitted that the benefit of the proviso to 59(3) of the Act was not admissible to the appellant as no bond in terms of the provisions of Section 59 and of the type as contemplated in the said proviso was executed by the unit. It was also argued that the property in the gold remain with the appellant who continued to be owner thereof and therefore was liable to pay the customs duty, since the gold was given on loan by the appellant. It was also argued that the same issue in respect of the same appellant was decided by the Tribunal in favour of the revenue in the case of MMTC Limited v. Commissioner of Customs, ICD Tughlakabad, Delhi . It was pointed out that this decision was upheld by the

Hon'ble Delhi High Court in MMTC Limited v. Commissioner of Customs reported as .

9. Admittedly, the appellant had supplied 23 kgs. of gold which was imported by it under the scheme on loan to M/s BRGL during the period from 08.07.1994 to 05.12.1994 under its associate scheme for export of jewellery made from such gold. It is also admitted that M/s BRGL committed a default and did not export jewellery made out of that gold. Shri Girdhari Lal, Prop. of M/s BRGL who was supplied the said 23 kgs.

of gold had admittedly removed it out of NEPZ without permission of the customs authorities and had used up that quantity of gold as admitted by him in his statement dated 20.06.1995 recorded under Section 108 of the said Act. The appellant on coming to know about the default committed by M/s BRGL to whom it had supplied gold on loan basis had informed the customs authorities about the same. On receiving such information, the customs authorities had verified the stock of M/s BRGL on 29.6.1995 and found that the entire quantity of 23 kgs. of gold which was loaned to Shri Girdhari Lal, Prop, of M/s BRGL was missing from the unit. It was admitted by the officials of MMTC, that 23 kgs.

of gold was issued to M/s BRGL, NEPZ during 08.07.1994 to 05.12.1994 but no jewellery made from such gold was exported.

10. The question that arises for our consideration is whether the appellant as an importer of gold under the scheme having imported the same by taking advantage of the exemption notification was liable for payment of customs duty due to failure on the part of the transferee on loan Girdhari Lal, Prop, of M/s BRGL to export jewellery that would account for the said quantity of 23 kgs. of gold loaned to him by the appellant.

10.1 The main defence taken by the appellant is that the bond which was executed by it for re-export should be treated only as a transit bond and it stood complied as soon as the transit from the IGI Airport to the registered warehouse ended and further that it ceased to be liable on Girdhari Lal, Prop, of M/s BRGL having given a general bond in terms of the proviso to Section 59(3) of the said

Act.

11. The relevant period fell within the export and import policy of 1992-1997. Chapter VIII of that policy dealt with diamond, gem and jewellery export promotion scheme. We are concern with the scheme announced in paragraph 88 of the policy and more particularly with sub-paragraph E thereof which related to, "Scheme for export of gold/silver and platinum jewellery and articles from export processing zone (EPZs) and from export oriented unit (EOU) complexes". It was, interalia, provided therein that such units may import gold. "In addition, gold of 0.999 or 0.995 fineness may also be made available to these units through SBI/MMTC or any other agency nominated by the Ministry of Commerce". The appellant was the nominated agency as per the scheme and was making such imports. It was further provided in the scheme that "the MMTC may also supply gold, ... to the approved gold jewellery manufacturing exporting units set up under this scheme, in accordance with the procedure specified from time to time".

12. The Central Government in exercise of its powers under Section 25(1) had issued exemption notification in respect of the goods specified in the annexure to that notification when imported into India by or on behalf of the gem and jewellery units set up in NEPZ at Ghaziabad under the scheme, for the manufacture of jewellery in free trade zones, from the whole of the duty of customs and the additional duty. Clause (vi) of the said general exemption notification No.258/87-dated 27.7.1987, provided a condition requiring the importer to execute a bond in the specified form and for the specified sum binding himself to fulfil the export obligation and to fulfill, interalia, the conditions stipulated in the said notification. In the subsequent notification for similar exemption under Section 25(1), notification No. 177/94-Cus dated 21.10.1994, which also would apply to the relevant period, exemption from whole of the duty of customs and the additional duty was made available when the specified goods were imported by gem and jewellery units set up in EPZ or in Free Trade Zone which were specified in Annexure-II, for manufacture or packaging of gem and jewellery, for exports out of India or for the provision of exports of gem and jewellery. Under Clause 4 of this notification, one of the conditions for availing of the benefit of exemption from duty was that, the importer execute a bond in such form and for such sum as may be specified by the

Assistant Collector of Customs, binding himself to bring said goods into his unit and use them within the zone for the purposes specified in the notification and 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 the said notification.

Paragraph 2 of the said notification which specifically referred to the appellant corporation reads as under: 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.

12.1. The opening words of paragraph 2 of the notification No. 177/94, namely, "Notwithstanding anything contained in the first paragraph", have been employed because the first paragraph relates to the imports made by the Units while the second paragraph is intended to extend the exemption also to imports made by the appellant corporation which is a government of India undertaking and the State Bank of India. The second paragraph of the said notification applies when the import of gold is made for supply to the said units 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 of 1992-1997 read with chapter - VIII of the Handbook of Procedures, Volume-I 1992-97 of the Government of India in the Ministry of Commerce. This would mean that all the provisions of the scheme applicable to supply of gold by the appellant to the Units were attracted when exemption in respect of imports made by the appellant was claimed by it under this notification.

12.2 As noted above, the appellant was required to follow the procedure specified from time to time when it supplied the gold imported by it to the exporting units set up under the scheme. As per the Public Notice No. 23 of 1987 which, inter alia, related to import procedure for gold, provisions were made for execution of various types of bond. The bond contemplated in paragraph 9 of the said public notice was for the goods being bonded over to the appellant for escorting and depositing the same to the concerned bonder at the jewellery complex. It was provided that before such delivery, "the MMTC on behalf of the bonder's shall execute a bond with the customs at Air Cargo unit for safe transit of the goods to the jewellery complex (as per Annexure 'C')". It is on the strength of this provision that the learned Counsel for the appellant had argued that the bond executed by the appellant which was prescribed as re-export bond should be treated only as a transit bond and it cannot raise any liability on the part of the appellant to pay duty once the transit was completed. The provisions of paragraph 10 of the said public notice, which reads as under, were however overlooked, while raising the said contention: 10. On arrival of the sealed parcel at the bonder's premises in the Jewellery Complex, all the import documents alongwith the sealed parcel will be presented by the MMTC to the Customs. The examiner/appraiser posted at the Jewellery complex shall check the seal and examine the goods with reference to the relevant invoice, packing list etc. already signed by the Customs appraiser at the Air Cargo Unit-II for manufacture in bond. He will also make necessary "entries in the General Bond Register in the manner specified in Annexure-B. However, before such finding is allowed, the bonder shall execute the bonds with the Customs at the Jewellery Complex: a) a bond under Section 59 of the Customs Act, 1962 for storage of the goods; b) a bond under Section 65 of the Customs Act, 1962 for manufacture-in-bond; and c) a bond in terms of the relevant notification as applicable for export of the finished products.

12.3 It will be noticed from the aforesaid procedural requirement for import of gold that it contemplated not only a bond under Section 59 of the said Act for storage of the goods and a bond under Section 65 for manufacture-in-bond, but also contemplated a bond in terms of the relevant notification as applicable for export of the finished products.

13. The Government of India, Ministry of Finance had issued a circular in the context of paragraph 88 of EXIM Policy (Circular No. 38/96-Cus dated 09.07.1996), referring to the exemption notifications under which the MMTC was authorized to import gold and sell/lend the same to actual users in various EPZ or EOUs, with an export obligation imposed thereon, observing that it was reported that the procedure existing was that the appellant who was the major importer, imported goods, cleared them for home consumption after executing a bond for observing the conditions of exemption, without any security and passed it on to the actual users. This clearly indicated that under the exemption notification even the appellant was required to execute the bond and that this circular was not intended to do away with that requirement but it was intended to impose further procedural requirements as mentioned therein. In para 2 of the circular it has been recorded that the Ministry had come to know that substantial quantity of gold imported by the appellant had not been duly accounted for by the concerned exporters. In some cases, the gold as well as the loanees have been found missing, "indicating gross abuse of duty exemption".

Keeping in view the sensitive nature of the commodity and risks to revenue, the matter was reviewed in consultation with the Ministry of Commerce and it was decided that the procedure indicated therein should be adopted in respect of gold imported by MMTC under the said duty exemption scheme. This circular cannot be construed so as to obliterate the conditions imposed in the exemption notification, which were basic to claiming exemption, and did not at all affect paragraph 2 of the exemption notification. Even in this circular it was clearly laid down that: "in the event of any exporter failing to discharge the export obligation within the prescribed period, responsibility for retrieving the gold delivered or loaned by the MMTC to the exporter, shall continue to remain with the MMTC". It is, therefore, clear that the additional safeguards which have been provided in this circular which required the Assistant Commissioner to proceed to recover the customs duty from the exporter do not mitigate against the primary liability of the importer, that is the appellant, to pay customs duty in respect of the gold loaned by it to the unit under the scheme.

14. The execution of the bond by the appellant undertaking to pay the customs duty in the event of the export obligation not being fulfilled is in consonance with the provisions of the exemption notification as well as the said scheme. For the purpose of ascertaining the nature of liability undertaken by the appellant under the bond executed by it, the contents of the bond are required to be examined. At no point of time, the appellant had challenged the validity of that bond executed by it. The binding effect of the bond executed by the appellant cannot be challenged by the appellant now.

15. There is no dispute over the fact that the appellant had executed Re-export bond, under notification No. 177/94-Cus as an importer, in which it was undertaken to furnish certificate duly signed by the customs official to the effect that the materials cleared free of duty under the notification No. 177/94 were in fact used for the manufacture of jewellery and produce proof of the export thereof and to fulfill the export obligation with the prescribed value addition and also to pay on demand an amount equal to the duty of customs leviable on the said goods as are not proved to the satisfaction of Assistant Collector of Customs to have been used for manufacture of jewellery for exports. It was also stipulated in the bond that the decision of the Assistant Collector of Customs as to the use of such material in the units manufacturing jewellery for export shall be final and binding on the importer. It is, therefore, clear that under the said bond, the appellant was liable to pay an amount equal to the duty of customs leviable on the goods as were not proved to the satisfaction of the Assistant Collector of Customs to have been used for manufacture of jewellery for exports. The material terms of the said bond which was executed by the appellant importer on 27.10.1994 as contemplated by the customs notification No. 177/94 read as under: i) If the importer shall delivery or cause to be delivered to the Assistant Collector of Customs within nine months from the date here such extended period as the said Assistant Collector may in his absolute discretion think fit to grant certificate duly signed by the Customs or by such other person as the said Asstt. Collector from time to time by the effect that the said materials which were cleared free of duty in terms of the said notification No. 177/94 dated 2.7.87 were in fact used in the manufacture of jewellery and producing proof of exports thereof and to fulfill the exports obligations with the prescribed value addition and to fulfill inter alia the

conditions stipulated in this Notification and in the letter of approval of intent or the industrial licence issued by the Board of Approvals and to pay on demand an amount equal to the duty of Customs leviable on the said goods as are not proved to the satisfaction of Asstt. Collector of customs to have been used for manufacture of jewellery for exports.

ii) Then the above bond shall be void and of no force otherwise the same shall remain in force and effect.

NOW IT IS HEREBY AGREED, admitted and declared by the parties hereto as follows: i) The decision of the said Asstt. Collector of Customs as to the use of the said material in the units manufacturing jewellery for export has been produced by the Importer to his satisfaction shall be final and binding on the Importer and should never be disputed by the Importer.

II) The Asstt. Collector or the other officer of the Govt. of India shall have full liberty without affecting the guarantee to postpone for any time to time exercise of any of the powers and any rights of any remedies against the Importer and the surety shall not be released by any such exercise by the said Asstt. Collector of Customs or other term between the President and the Importer or any Govt. officers and the Importer.

iii) The payment of the amount of Bond shall not effect the liability of the Importer or any other punishment or action under the law.

iv) The bond has been executed under the order of the Central Govt.

and/or under the bond in which the public are interested.

vi) The guarantee herein contained shall not be determined or effect by the liquidation or winding up of the parties hereto.

vii) The President through the Asstt. Collector of Customs, Cargo, IGI Airport, New Delhi or other officers may recover the said amount of Rs. 108035899/- (Rupees ten crores eighty lacs thirty five thousand eight hundred and ninty nine only) in the matter laid down in the Section (1) of Section 142 of the Customs Act, 1962

without prejudice to any mode of recovery from the Importer.

viii) The Importer M/s MMTC Limited, NEPZ, Noida bind themselves to the President of India to pay to the Collector of Customs for the time being the amount of Rs. 108035899/-(Rupees ten crores eighty thousand thirty five thousand eight hundred and ninty nine only) subject to the conditions mentioned here above.

15.1 It is not disputed that under of the terms of aforesaid bond failure to fulfill export obligation in respect of gold which was loaned to M/s BRGL entailed liability on the part of the appellant-importer to pay on demand an amount of duty equal to the duty of customs leviable on the said goods. From a bare reading of the bond, there is absolutely no substance in the contention that the said bond should be treated as a transit bond. It was clearly stipulated therein that the amount covered under the bond could be recovered under Section 142(1) of the Customs Act. It is also not disputed that the amount of the said bond covered even the said 23 kgs. of gold; it being a bond for a much larger quantity of gold. Admittedly, this bond was never revoked or challenged. It is surprising that the appellant being a Government of India undertaking should take such a plea when the bond itself recorded that it was executed under the order of the Central Government. Execution of such a bond was clearly contemplated under the scheme under which the appellant imported gold and supplied it to the units in the zone. Non-fulfillment of export obligation by the unit to whom the gold was loaned created the liability on the part of the appellant to pay the amount equal to the duty payable in respect of such gold. The bond was specifically executed in terms of the Notification No. 177/94 and could never be considered to be void, as contended on behalf of the appellant by the learned Counsel, on the ground that such a bond was not contemplated. The appellant is estopped from disowing its liability arising under the bond.

16. The contention that the appellant's liability to pay the amount equal to the duty amount payable in respect of said 23 kgs. of gold ended on Shri Girdhari Lal, Prop. of M/s BRGL executing a bond under Section 59(2) of the said Act is misconceived. There was a general bond executed by Shri Girdhari Lal a copy of which is placed on record and in which all the material blanks were not filled up.

According to the learned Counsel for the appellant, when the goods were transferred to Shri Girdhari Lal who had executed the general bond as a transferee, the bond executed by the transferor remain enforceable only for a sum mentioned therein less the amount for which a fresh bond was accepted from the transferee. In order to appreciate this contention, the provisions of Section 59(2) and (3) are reproduced hereunder: (2) For the purposes of Sub-section (1), the [Assistant Commissioner of Customs] may permit an importer to enter into a general bond in such amount as the [Assistant Commissioner of Customs] may approve in respect of the warehousing of goods to be imported by him within a specified period.

[3] A bond executed under this section by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to another warehouse: Provided that where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee.

16.1 It will be noticed from the provisions of Section 59 that it relates to a warehousing bond and under Sub-section (2), Assistant Commissioner of Customs may permit an importer to enter into a general bond binding himself in a sum equal to twice the amount of the duty assessed. The bond executed by Shri Girdhari Lal under Section 59(2) was in respect of goods imported by him as is clear from Clause 9 of that bond; while the bond contemplated by the proviso to Sub-section (3) of Section 59 was a fresh bond from transferee in a sum equal to twice the amount of duty assessed on the goods transferred. No such fresh bond as contemplated by the proviso to Sub-section (3) of Section 59 was executed by the transferee and the general bond executed by Shri Girdhari Lal under Sub-section (2) of Section 59 in respect of the imports made by himself cannot be treated as a fresh bond contemplated by the proviso to Sub-section (3) of Section 59. Therefore, the liability of the appellant in respect of the gold in question never lessened as contemplated by the proviso to Sub-section (3) of Section 59.

Furthermore, the liability under Section 59 is in context of a warehousing bond which was separately executed by the appellant and a copy of which is also on record. That bond is quite different from the Re-export bond and the nature of liability in respect of a warehousing bond cannot be mixed up with the liability arising under the Re-export bond executed by the appellant who continued to remain liable as importer of gold which was loaned by it to Shri Girdhari Lal, Prop. of M/s BRGL.

17. The Tribunal has earlier in the appellant's own case held that the benefit of exemption from payment of duty was not available to gold imported by the appellant if conditions of the notification were not complied with. It was tried to be contended that the said decision was rendered in the context of the proviso to para 2 of the notification and therefore it was distinguishable from the present case. In the alternative it was contended that the matter may be referred to a larger bench, We have given above, our own reasons for holding that the appellant continued to remain liable under the Re-export bond contemplated by notification No. 177/94 as well as under the export incentive scheme and therefore, the said contention cannot be accepted.

In the present case we are not concerned with the proviso to para 2 of the notification and there arises no need to refer the matter to a larger bench.

18. For the foregoing reasons, we do not find any substance in any of the contentions raised on behalf of the appellant and find ourselves in complete agreement with the reasoning and findings of the learned Commissioner (Exports) in the impugned order. The appeal is, therefore, dismissed.

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