

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20459 of 2020

[Arising out of Order-in-Appeal No. 118/2020 dated
25/09/2020 passed by the Commissioner of Customs,
Bangalore-I (Appeals)]

Rajesh Exports Ltd.

No. 4, Batavia Chambers, Kumara
Krupa Road, Kumara Park East
Bangalore – 560 001
Karnataka

Appellant(s)

VERSUS

**Commissioner of Customs,
Bangalore**

C.R. Building, Queens Road, P.B. No.
5400, Bangalore - 560 001
Karnataka

Respondent(s)

Appearance:

Mr. Kiran S. Jawali, Senior Advocate for the Appellant

Mr. P. Gopakumar, Additional Commissioner (AR) for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, JUDICIAL MEMBER

HON'BLE SHRI C.J. MATHEW, TECHNICAL MEMBER

Final Order No. 20078 /2022

Date of Hearing: 28/02/2022

Date of Decision: 03/03/2022

Per : ASHOK JINDAL

The appellant is aggrieved from the impugned order wherein it has been held that the imported gold be released and the appellant will utilize the imported gold in manufacture and export

the same.

2. The facts of the case are that the appellant filed Bill of Entry No. 3682159 dated 20/10/2017 under Notification No. 46/2011, Sl. No. 966 (i) for import of 150 pieces of Gold Bars of purity 99.10% totally weighing 150 Kg falling under Customs Tariff Heading 7108 12 00 of Customs Tariff Act, 1975. The gold was detained and a query was raised to the appellant to clarify the end use of eligibility of import of gold in terms of DGFT Notification No. 34/2017 dated 18/10/2017. After the query was answered by the appellant, the goods were detained and a show-cause notice was issued to the appellant for confiscation of the imported gold and for imposition of penalty under Section 112 of the Customs Act, 1962. The appellant contested the show-cause notice but the adjudicating authority absolutely confiscated the imported gold and also imposed a penalty of Rs. 6,00,00,000/- (Rupees Six Crores only) under Section 112 of the Customs Act. The said order was challenged before the learned Commissioner, who set aside the adjudication order of confiscating the gold and imposing penalty but gave a direction to release the imported gold with the condition that the appellant will utilize the same for manufacture and export by themselves. Against the said order, the appellant is before us.

3. The learned counsel for the appellant submits that the appellant placed the order for purchase of the imported gold on 12/10/2017 which was invoiced by the seller on 15/10/2017 and the goods were delivered to the transporter on 17/10/2017 and the airway bill was also issued on the same day. The appellant filed Bill of Entry on 20/10/2017 as a Normal importer. He further submits that the RBI Regulations were with regard to import of Gold Bars under para-C.11 and C.11.2 of the Master Directions of RBI. Para C.11 stipulates that the Nominated Banks and Nominated Agencies were permitted to import gold on consignment basis and para-C.11.2 stipules that import of Gold Bars under Letter of Credit was

restricted to maximum credit period for 90 days. Therefore, it is clear that as on 20/10/2017, the import of Gold Bar was clearly permissible to import in India upon payment of Customs duty without any end use condition. He further submitted that post 2017, free import of gold was restricted by two notifications (a) Notification No. 34/2017 dated 18/10/2017 issued by DGFT which stipulated end use condition of manufacture and export for Gold Bar imported as Nominated Agencies which primarily meant that Gold Bars imported under consignment basis were required to be manufactured and exported which also mean that Gold Bars which are not imported as Nominated Agency or on consignment basis were importable without any end use condition. Further, on 18/12/2019, another notification was issued by the Ministry of Commerce, Government of India which completely restricted the import of Gold Bars by Normal importers and only Nominated Agencies were permitted to import the Gold Bar which means that before 18/12/2019, Gold Bars were also importable by Normal importers. He further submitted that the appellant regularly imported Gold Bars both as Nominated Agency for export purpose and also as a Normal importer for domestic consumption. He also submits that it has placed an order of the impugned gold on 12/10/2017 which was packed and invoiced on 15/10/2017 and inspected on 17/10/2017 further handed over to International Airlines on 17/10/2017 itself. Upon arrival of gold in India, the appellant filed a Bill of Entry for clearance of the gold as Normal importer as the gold was required for domestic consumption. He also submits that the gold must have been cleared in normal course but instead of clearing the gold, Customs detained the gold holding that in terms of Notification No. 34/2017 dated 18/10/2017, the Gold Bars would not have been imported. He further submits that for stipulating the condition of manufacture and export, the Notification dated 18/10/2017 was not applicable at all because the Notification was not applicable for import by Normal importer. Just because the appellant was a Nominated

Agency, it does not mean that Notification dated 18/10/2017 was automatically applicable to the appellant. He further submits that the import was done before 18/10/2017 i.e. on 17/10/2017 and the Notification No. 34/2017 came into effect from 18/10/2017. Therefore, the import has been done prior to introduction of the Notification and the conditions of the Notification are not applicable to the appellant. Further, by Notification issued on 18/12/2019, it is clear that prior to the date of the Notification dated 18.12.2019, the gold could have been imported freely. He also relied on the decision of this Tribunal in the case of ***M/s. Sri Exports Vs. CC, Bangalore Customs vide Final Order No. 20370/2019 dated 30/04/2019*** to say that gold was freely importable during the impugned period.

4. On the other hand, the learned AR opposed the contention of the learned counsel and submits that although the Airway bill was issued on 17/10/2017 but the goods left the exporting country after 18/10/2017. Therefore, it cannot be said that goods have been imported prior to the date of the Notification. He further submitted that appellant being a Nominated Agency, they have imported the gold and they are bound by end use conditions in terms of Notification No. 34/2017 dated 18/10/2017. Therefore, the impugned order is to be upheld.

5. Heard the parties. Considered the submissions.

6. On consideration of the rival contention of the parties, the following issues have been framed:

- (a) What should be the date of the import of the gold in the facts and circumstances of the case?
- (b) Whether the provisions of Notification No. 34/2017 dated 18/10/2017 are applicable to the facts of the case or not?
- (c) Whether prior to the Notification dated 18/12/2019, the gold was freely importable or not?

(a) What should be the date of the import of the gold in the facts and circumstances of the case?

The facts of the case are not in dispute that the appellant placed the order for import of the gold on 12/10/2017 and the seller issued the invoice on 15/10/2017, the goods were examined by the Indonesia Customs on 17/10/2017 and the transporter issued Airway bill on 17/10/2017 for transportation of the goods.

The relevant date for import of the goods by air is the date on which Airway bill is issued that on which date goods left the last airport in the country from which the import is affected. Admittedly, in this case the Airway bill has been issued on 17/10/2017 and thereafter there is no control of the importer or the seller of the goods. In that circumstance, in the facts and circumstances of the case, the relevant date for import by air is the date on which Airway bill has been issued i.e. 17/10/2017.

In view of this, we hold that the date of import of the impugned gold is 17/10/2017.

(b) Whether the provisions of Notification No. 34/2017 dated 18/10/2017 are applicable to the facts of the case or not?

As it is already been held that the date of import of the impugned gold is 17/10/2017, further, we find that the provisions of Notification No. 34/2017 dated 18/10/2017 are applicable, if the Nominated agency imports the gold, the same is required to be manufactured and exported thereof. But in the case in hand, the appellant has imported goods as a Normal importer and filed Bill of Entry as a Normal importer in terms of RBI Guidelines, therefore the provisions of Notification No. 34/2017 dated 18/10/2017 are not applicable to a Normal importer of gold and the said

notification is came to be issued after the date of import.

In view of that, we hold that Notification No. 34/2017 dated 18/10/2017 is not applicable to the facts of this case.

(c) Whether prior to the Notification dated 18/12/2019, the gold was freely importable or not?

As per the Notification dated 18/12/2019, it has been held that after issuance of the Notification dated 18/12/2019, only Nominated agencies can import the gold with end use condition which otherwise means that prior to issuance of the Notification dated 18/12/2019, the gold was also freely importable. The said observation gets support from the order of this Tribunal in the case of **M/s. Sri Exports** (supra), wherein this Tribunal observed as under:

“6. After considering the submissions of both the parties and perusal of the material on record, I find that the only allegations of the Department is that the appellant has imported the Gold Medallion of Purity 999.9 falling under CTH 71141910 of Customs Tariff Act, 1975 and the same is not permitted because the appellant is not a Nominated Bank or a Nominated Agency or a Holder of a Status of a Star/Premier Trading House. As per the RBI regulations, it is only the Nominated Bank and Nominated Agency as notified by DGFT which is permitted to import the said goods. Further, I find that it is not in dispute that the Gold Medallion of Purity 999.9 fall under CTH 71141910 of CETA 1975 and as per the Import Policy, the „Articles of Gold“ are classifiable under CTH 71141910 and are freely importable and there is no restriction and in view of the decisions cited supra, Gold Medallion fall within the definition of „Articles of Gold“. Further, I find that the appellants have

imported the Gold Medallion which is classified as „Articles of Gold“ from Korea and vide Notification No. 152/2009 dated 31.12.2009 the BCD leviable on the import of „Articles of Gold“ from Korea falling under Chapter 71141910 is Nil. Further, I find that CBEC Circular No. 27/2016-Cus. dated 10.06.2016 relied upon by both the authorities is not applicable in the facts and the circumstances of this case because the appellant is not a Nominated Agency but it is only an individual importer who has imported gold against advance payment or Letter of Credit (not exceeding 90 days) for Home consumption, wholesale and retail sales. Further, the Master Direction issued by the RBI is also not applicable in the present case because that instruction of the RBI only applies to Nominated Banks and Nominated Agencies as notified by DGFT. Further, I also note that in the present case, the importer has not imported gold on consignment basis and therefore, the conditions laid down by the RBI is not applicable to the appellant. Another important aspect is that with regard to the same goods, the appellant has placed on record two Bill of Entries filed at Hyderabad Airport and imported the Gold Medallion from Korea under the same Notification and the same was cleared on Nil rate of duty. Further, I note that same goods is being cleared at Delhi Airport at Nil rate of duty and the Bill of Entries have been placed on record proving the clearance at Nil rate of duty at Delhi Airport. The appellant has also relied upon the judgment of the Hyderabad CESTAT in his own case wherein the goods imported was Gold Granules of the same purity to submit that on the identical grounds the Tribunal in Appeal No. C/30812/2018 has allowed the appeal of the appellant. In view of my discussion above, I am of the

considered opinion that the impugned order is not sustainable in law and therefore, I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any and direct the Customs Authorities to clear the goods free of duty.”

In view of the above analysis, we hold that prior to the notification dated 18/12/2019, the gold was also freely importable by the Normal importer in terms of RBI Guidelines.

7. In view of the above analysis, we hold that the appellant imported the goods as a normal importer; therefore, the restrictions contained in Notification No. 34/2017 dated 18/10/2017 are not applicable to the appellant and the import has been done prior to introduction of the Notification dated 18/10/2017.

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8. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Order pronounced in the Open Court on **03/03/2022**)

(ASHOK JINDAL)
JUDICIAL MEMBER

(C. J. MATHEW)
TECHNICAL MEMBER

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