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CESTAT Delhi Quashes Bond Enforcement Against Bank of Nova Scotia

In a significant ruling by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), the Bank of Nova Scotia successfully challenged the enforcement of bonds executed for recovery of duty, interest, and penalty against two exporters, Nikkamal Jewellers and Krishan Chander Ramesh Chander (P) Ltd. The decision, pronounced on August 5, 2025, sets a precedent for cases involving the obligations of nominated agencies under customs notifications.

Background

The Bank of Nova Scotia, a multinational financial service provider, operates as a nominated agency for importing bullion under the "Export Against Supply by Nominated Agencies" scheme. This scheme, governed by Notification No. 57/2000-Cus dated May 8, 2000, allowed duty-free import of gold, provided it was exported as jewellery within 120 days. However, the second proviso of this notification, which mandated this obligation, was omitted by Notification No. 33/2015-Cus dated May 15, 2015.

The case arose when the Directorate of Revenue Intelligence (DRI) intercepted gold jewellery allegedly being smuggled by exporters linked to the Bank of Nova Scotia. A show cause notice was issued to various parties, including the exporters, but the Bank of Nova Scotia was not explicitly called upon to respond.

Key Arguments by the Bank of Nova Scotia

The Bank of Nova Scotia presented several compelling arguments during the appeal:

1. **No Show Cause Notice:** The appellant was not required to show cause in the notice issued by the customs authorities, and only a copy was marked to them for information.
2. **Compliance with Notification:** The Bank had complied with all requirements, including obtaining proof of export and paying duty with interest for non-exported gold.
3. **Cancelled Bonds:** Bonds executed by the Bank had already been canceled by customs authorities after verifying compliance, making enforcement of these bonds invalid.
4. **Post-2015 Period:** The period in question was after May 15, 2015, when the second proviso of the notification was omitted, removing the obligation to export jewellery within 120 days.

Tribunal's Decision

The Tribunal ruled in favor of the Bank of Nova Scotia, stating that:

- The enforcement of bonds was unjustified as the appellant was not called upon to show cause.
- Once bonds were canceled by customs authorities, they could not be enforced again.
- The omission of the second proviso in 2015 meant the appellant was no longer obligated to fulfill the conditions stipulated in the notification for the period in question.

Implications of the Ruling

This decision underscores the importance of procedural fairness in customs enforcement actions. It highlights that agencies cannot enforce canceled bonds or impose obligations retroactively when the governing notification has been amended. The ruling also clarifies the responsibilities of nominated agencies under customs schemes, providing relief to entities like the Bank of Nova Scotia.

Conclusion

The CESTAT's decision in favor of the Bank of Nova Scotia is a landmark judgment that reinforces the principles of due process and fair enforcement. It serves as a reminder to customs authorities to adhere to procedural norms and respect amendments to notifications. For businesses operating under similar schemes, this ruling offers clarity and protection against arbitrary enforcement actions.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Delhi

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 51147 OF 2020

(Arising out of Order-in-Original No. 01/2020/UG/PR.COMM dated 09.01.2020 passed by the Principal Commissioner of Customs, ACC Import, New Delhi)

Bank of Nova Scotia

91, 3 North Avenue, Maker Maxity,
Bandra Kurla Complex,
Mumbai 400051

.....Appellant

versus

**Principal Commissioner of Customs,
ACC Imports**

New Customs House, Near IGI Airport,
New Delhi 110 037

.....Respondent

APPEARANCE:

Shri Udit Jain, Advocate for the Appellant

Shri C. Dhanasekharan, Special Counsel for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 25.02.2025

Date of Decision: 05.08.2025

FINAL ORDER NO. 51142/2025

JUSTICE DILIP GUPTA:

Bank of Nova Scotia¹ has filed this appeal to assail that part of the order dated 09.01.2020 passed by the Principal Commissioner of Customs, ACC Import, New Delhi² that directs for enforcement of the bonds executed by the appellant for recovery of duty, interest and penalty against two exporters. The said order is reproduced below:

"86(20.) **I order that the bonds executed** by M/s
MMTC Ltd. and **M/s Bank of Nova Scotia**
with Customs authorities at the time of
import of gold in terms of notification

-
1. **the appellant**
 2. **the Principal Commissioner**

No. 57/2000-Cus. dated 08.05.2000 as amended, be enforced and appropriated against the duty, interest and penalty leviable from M/s Nikkamal Jewellers, M/s Prem Jewellers, M/s Ambica Vikas Udyog, M/s Krishan Chander Ramesh Chander (P) Ltd., Shri Gulshan Rai Kohli, Shri Mukesh Kumar Sawal Chand Bohra, Shri Jinesh Kumar Jain, Shri Ranjit Kumar Hirachand Ji Jain, Shri Manoj Kumar Vaishnav, Shri Pankaj Jain, Shri Neeraj Jain Shri Mahendra Kumar Amrit Lal Jain and Shri Komal Jain as discussed in forgoing paras **in case of failure on the part of the concerned persons/parties to pay the same.”**

(emphasis supplied)

2. The appellant is a multinational financial service provider in India having market in bullion business. In order to cater the bullion requirement in India, the appellant imports bullion from the affiliates of Bank of Scotia located across the world and supplies the same to gems and jewellery domestic manufacturers as well as manufacturer exporters in India. For the purpose of importing bullion, the appellant obtained the license of nominated agency in accordance with paragraph 4.41 of the Foreign Trade Policy 2015-2020 from the Reserve Bank of India in the year 1997.

3. The appellant availed the benefit of a Scheme called “Export Against Supply by Nominated Agencies” as contained in the Notification No. 57/2000-Cus dated 08.05.2000³. Prior to 15.05.2015, the nominated agency, which in this case is the Bank of Nova Scotia, in terms of the Notification was allowed to import gold without payment of duty after executing a bond with the Assistant Commissioner of Customs. The gold

3. the Notification

imported by the nominated agency was then required to be exported in the form of jewellery or articles either by the nominated agency itself or through any other exporter.

4. The relevant portion of the Notification, as it stood prior to 15.05.2015, is reproduced below:

"Notification: 57/2000-Cus. dated 08-May-2000

***** **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, -**

(a) *****

(b) **under the Scheme for 'Export Against Supply by Nominated Agencies'** as referred to in Paragraph 8.22 of the Export and Import Policy, read with relevant provisions of Chapter 8 of the Handbook of Procedures, Volume I,

from the whole of the duty of customs leviable thereon, which is specified in the said First Schedule and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act:

Provided that *****

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 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 **within a period of 120 days from the date of issue of gold/silver/platinum** to the exporters, or such extended period as the Assistant Commissioner of Customs or Deputy Commissioner of Customs, on sufficient cause being shown may allow, **and binding himself to pay on demand duty on quality of gold/silver/platinum representing the difference between the quantity issued and that contained in the exported jewellery or articles: *******

(emphasis supplied)

5. The second proviso to the opening paragraph of the Notification was deleted by Notification No. 33/2015-Cus dated 15.05.2015 and the relevant portion is reproduced below:

**“Notification No. 33/2015-Cus dated
15.05.2015**

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 directs that each of the notification of the Government of India in the Ministry of Finance** (Department of Revenue), specified in column (2) of the Table hereto annexed **shall be amended or further amended**, as the case may be, **in the manner specified in the corresponding entry in column (3) of the said Table, namely :-**

Serial number	Notification number and date	Amendments
(1)	(2)	(3)
*****	*****	*****
5.	57/2000-Customs, dated the 8th May, 2000, G.S.R. 413 (E),	In the said notification,- (I) in the opening paragraph (i) in clause (a), for the word, letter

	dated the 8th May, 2000	and figures "paragraph 4A.14", the word, letter and figures "paragraph 4.46" shall be substituted; (ii) in clause (b), for the word, letter and figures "paragraph 4A.9", the word, letter and figures "paragraph 4.41" shall be substituted; (iii) the second proviso shall be omitted;
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(emphasis supplied)

6. It would be seen that prior to 15.05.2015, in terms of the second proviso to the Notification, the importer had to in case of import of gold under the "Export Against Supply by Nominated Agencies" Scheme, execute a bond in such form and for such sum as may be specified by the Assistant Commissioner undertaking to export, either by itself or through other exporters, within a period of 120 days from the date of issue of gold to the exporters and bind himself to pay on demand duty on the quantity of gold representing the difference between the quantity issued and that contained in the exported jewellery. However, the said second proviso to the opening paragraph of the Notification was omitted by the subsequent Notification dated 15.05.2015.

7. Based on some specific information, the Directorate of Revenue Intelligence⁴, Delhi Zonal Unit, intercepted two international passengers, namely, Mukesh Kumar Sawalchand Bohra and Ranjit Kumar Hirachandji Jain at the T-3 Terminal of IGI International Airport on the intervening

4. DRI

night of 27/28 October, 2015. These two international passengers were supposed to be hand carrying the gold jewellery manufactured by the appellant and these two passengers had tickets to go to Dubai and Hongkong. It is alleged that after security and immigration clearance, while they were waiting in the transit lounge, they handed over the gold jewellery bags to two domestic passengers Jinesh Kumar Jain and Manoj Vaishnav, who had tickets to go to Mumbai.

8. A show cause notice dated 29.11.2017 was issued to a number of persons, including the appellant. Paragraph 28 of the show cause notice deals with the role of members of syndicate that emerged from the investigation. Though the notice was issued to various exporters of gold jewellery and certain other persons calling upon them to show cause, but the appellant was not called upon to show cause to any allegation.

9. It is for this reason that the appellant submitted a letter dated 24.01.2018 in response to the show cause notice stating that it was not making any submission since it had not been called upon to show cause. The appellant also pointed out that the show cause notice was only marked to the appellant. The reply submitted by the appellant in response to the show cause notice is reproduced below:

"We, The Bank of Nova Scotia, ('Bank') refer to the captioned Show Cause Notice ('SCN') issued to our customers, M/s Nikkamal Jewellers Ltd, M/s Krishna Chander Ramesh Chander (P) Ltd., which has also been marked to us.

In this regard, we would like to inform your Goodself that we have not been asked to show cause with respect to the allegations made in the SCN and accordingly, we understand that the same is marked to us for our information. Therefore, we are not making any submissions before your Goodself at this stage.

Further, we request your Goodself that any action adverse to the interest of the Bank including but not limited to enforcement of the Bond executed by us, should not be taken without giving us an opportunity to make submissions and giving us an opportunity of personal hearing. **We submit that there are no allegations in the SCN against us of any default made by us and therefore we would request your Goodself not to initiate any adverse action against our interest."**

(emphasis supplied)

10. However, no corrigendum in respect of the appellant was issued to the show cause notice.

11. The Principal Commissioner, by the order dated 09.01.2020, while dealing with the issue 'whether the bonds executed by the importers i.e. nominated agency can be enforced' observed as follows:

"83. It is on record that M/s Nova Scotia Bank and M/s MMTC Ltd. are the two nominated agencies who have imported duty free gold in terms of notification No.57/2000-Cus. As per the condition stipulated under the said notification both these nominated agencies were bound to ensure that the gold so procured should be utilized for the purpose of making and exporting the gold jewellery through the exporters to whom the same is sold/given. They are the primary importer and have executed Bonds, undertaking to export gold jewellery out of such import within the stipulated time period and were also required to maintain a proper account of import consumption/utilization of gold (exporter wise) under the said scheme. They are also required to obtain necessary documents including BG/security etc.

84. In the instant case, as discussed hereinabove, the exporters have been found guilty of contravening the provisions of Notification No.57/200-Cus. The exemption

benefit accruing on account of the beneficial provisions contained in the said notification cannot be extended to these exporters due to which it has been concluded by the investigation that all these exporters are required to pay the duty forgone along with interest and penalty. I also find that as per Sub-para (ix) of para 4 of the DGEP's Circular No.28/2009-Cus dated 14.10.2009 read with notification no.57/2000-Cus, it becomes clear that the exporters are equally responsible/accountable to comply with the conditions of the notification no. 57/2000-Cus at par with the importers i.e. the nominated agencies in terms of the bond which spelt out their liability to pay duty in respect of the gold imported under the scheme on non-fulfillment of export obligation. I find that:

a) In the case of exporter namely M/s Nikkamal Jewellers, Custom duty foregone has been determined at Rs.76,76,474/- against which an amount of Rs.74,39,364/- has been deposited by the exporter and the Bank of Nova Scotia on behalf of the exporter. Accordingly, the remaining duty of Rs.2,37,110/-becomes recoverable along with interest and penalty as discussed in the aforesaid paras.

b) *****

c) *****

d) In the case of exporter namely M/s Krishan Chander Ramesh Chander (P) Ltd., Custom duty foregone has been determined at Rs.3,56,08,249/- against which an amount of Rs.4,06,43,459/- has been deposited by M/s Nova Scotia Bank on behalf of the exporter. Accordingly, the excess amount of Rs.50,35,210/- paid by them needs to be adjusted against the interest and penalty payable by them as discussed in the aforesaid paras.

85. In view of the above, I am of the opinion that differential amount recoverable on account of duty, interest and penalty needs to be appropriated by enforcing the bonds executed by the importers i.e. the nominated agencies.”

(emphasis supplied)

12. It is seen that in the case of the appellant, two exporters namely M/s. Nikkamal Jewellers⁵ and M/s. Krishan Chander Ramesh Chander (P) Ltd.⁶ have been mentioned and the differential amount recoverable on account of duty, interest and penalty has been appropriated by enforcing the bonds executed by the appellant.

13. Shri Udit Jain, learned counsel for the appellant made the following submissions:

- (i)** The impugned order, in so far as the appellant is concerned, deserves to be set aside for the reason that the show cause notice was merely marked to the appellant and it did not call upon the appellant to show cause as to why the bonds may not be enforced for recovery of differential duty, interest and penalty;
- (ii)** The appellant had duly complied with the Notification;
- (iii)** The appellant had obtained all the proof of export from Nikkamal Jewellers and Krishan Chander which established proof of export of jewellery by the said exporters out of the gold supplied by the appellant. However, where exports were not made, the appellant informed the customs authorities and paid the duty with interest in respect of gold procured if jewellery was not exported;
- (iv)** The Notification does not cast any responsibility on the appellant to verify whether the manufacturer to whom the

5. Nikkamal Jewellers
6. Krishan Chander

gold has been supplied for export of jewellery has maintained proper records;

- (v)** As the appellant had supplied all the relevant documents concerning Nikkamal Jewellers and Krishan Chander and customs duty with interest also deposited to the extent of non-export, all the bonds executed by the appellant which were attributable to gold supplied to Nikkamal Jewellers and Krishan Chander were cancelled by the customs authorities. Once the bonds were cancelled, the bonds could not have been enforced for appropriation of duty, interest and penalty attributable to Nikkamal Jewellers and Krishan Chander; and
- (vi)** The period involved in this appeal is post 15.05.2015. During this period the second proviso to the Notification, of which violation has been alleged, had been omitted and, therefore, there was no obligation on the part of the appellant to export jewellery having gold equivalent to the gold imported within a period of 120 days from the date of issue of the gold.

14. Shri C. Dhanasekharan, learned special counsel appearing for the department, however, supported the impugned order and submitted that the Principal Commissioner was justified in ordering that the differential duty, interest and penalty recoverable from Nikkamal Jewellers and Krishan Chander should be appropriated by enforcing the bond executed by the appellant.

15. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

16. As noted above, the appellant was appointed as a nominated agency and in terms of the Notification was allowed to import gold without payment of duty after executing a bond with the Assistant Commissioner of Customs. The gold imported by the appellant was then required to be exported in the form of jewellery or articles either by the appellant or through any other exporter.

17. It clearly transpires from the show cause notice dated 29.11.2017 that though it had called upon various persons to show cause, but the appellant was not required to show cause and only a copy of the show cause notice was marked to the appellant.

18. This fact was specifically pointed out by the appellant in the reply dated 24.01.2018 submitted to the show cause notice but no steps were taken by the department to issue a corrigendum to the show cause notice. This is what was also emphasized by the learned counsel for the appellant at the time of hearing of the appeal, but still the order was passed to the effect that the differential amount of duty, interest and penalty against Nikkamal Jewellers and Krishan Chander should be appropriated by enforcing the bond executed by the appellant.

19. As the appellant was not called upon to show cause why the bonds executed by the appellant may not be enforced and only a copy of the show cause notice was marked to the appellant, the bonds executed by the appellant could not have been enforced. The impugned order to the extent it enforces the bond for recovery of duty, interest and penalty, therefore, deserves to be set aside for this reason alone.

20. In any view of the matter, once the bonds executed by the appellant had been cancelled by the customs after the appellant had produced the

relevant documents and satisfied the customs authorities, the issue of enforcing the cancelled bonds does not arise.

21. The period involved in the matters of M/s. Prem Jewellers⁷ and Krishan Chander are for a period after 15.05.2015 when an amendment had been made to the Notification by a Notification dated 15.05.2015 and the second proviso to the opening paragraph of the Notification had been omitted. The Principal Commissioner, therefore, is not justified in asserting that the appellant had failed to fulfill the conditions stipulated in the Notification. The appellant may have executed a bond with the Assistant Commissioner, but as the second proviso to the Notification had been omitted on 15.05.2015, and the period involved is after 15.05.2015, the bonds executed by the appellant could not have been enforced for recovery of duty from Prem Jewellers and Krishan Chander.

22. It is, therefore, not possible to sustain the order dated 09.01.2020 passed by the Principal Commissioner directing for enforcement of the bond executed by the appellant for recovery of dues against Nikkamal Jewellers and Krishan Chander.

23. The impugned order 09.01.2020 passed by the Principal Commissioner, in so far as it concerns the appellant, deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **05.08.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shreya

7. Prem Jewellers