

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

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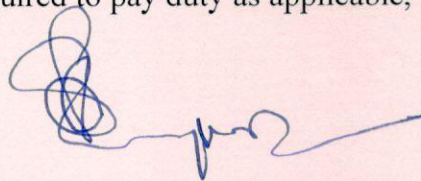
GST,
CUSTOMS,
FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

**OPINION WITH REGARD TO COMPLIANCE REQUIREMENTS
UNDER CUSTOMS NOTIFICATION NO.57/2000 DATED 08.05.2000**

1. The above notification as amended, among others, provides for import of gold under the scheme 'export against supply by nominated agencies' as per foreign trade policy provisions. Gold can be purchased from the nominated agencies by the exporter for manufacture of gold jewellery/articles for their subsequent export. The notification as well as the foreign trade policy stipulates various conditions to be complied with by the nominated agencies and the exporters. Further a circular bearing number 27/2016 – Customs dated 10 June 2016 has been issued, which has been further amended by circular 23/2018 – Customs dated 23 July 2018 with regard to the subject to scheme.
2. As far as the nominated agencies, including banks, are concerned, they are required to execute bond with guarantee as applicable to the customs authorities and the condition in this regard as contained in the notification is reproduced below:

*“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 ninety days from the date of issue of gold / silver / platinum to the exporters, and binding himself to pay on demand duty on quantity of gold / silver / platinum representing the difference between the quantity issued and that contained in the exported jewellery or articles.**”*

3. As far as the exporters are concerned the foreign trade policy provides that they should furnish a copy of the shipping will Customs attested invoice and bank certificate for realisation of export proceeds. However as far as the nominated agencies are concerned, as importers, they have to show that the gold imported and issued by them to the exporter has been exported and in case there is a difference/shortfall between the quantity that is issued and the quantity that is exported, then they are required to pay duty as applicable, for the unaccounted quantity.



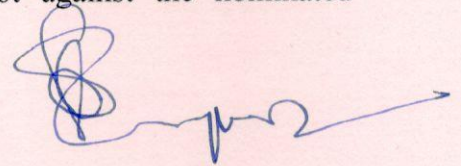
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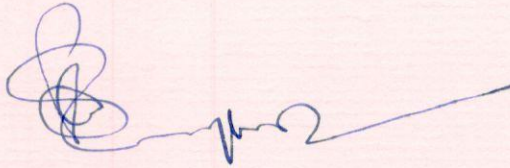
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4. Thus, there is a basic difference with reference to the compliance requirements for the nominated agency/bank on the one hand and the exporter on the other hand.
5. The nominated agencies/banks, as importers, have to furnish evidence to the customs that the quantity of gold imported and issued to the exporter had been converted into jewellery/articles and exported out of the country. Nothing beyond that. In case there is a difference/shortfall then for that quantity duty needs to be paid. On the other hand, in the case of exporter evidence needs to be provided not only for export of the jewellery but also for realisation of export proceeds. This is a normal requirement for any exports. It is also understood by everyone that in case of failure in this regard on the part of the exporter, provisions of Foreign Exchange Management Act will be attracted and action can be taken against the exporter. (and not against the nominated agencies/banks as they are not the exporters)
6. In the above situation for any contravention/violation of Foreign Exchange Management Act provisions, by way of non-realisation of sale proceeds for the jewellery exported, the appropriate authority for initiating action will be the Enforcement Directorate.
7. Under the Customs Act, the nominated agencies/banks cannot be asked to produce evidence of realisation of export proceeds. Such a requirement will go beyond the stipulations contained in the above notification. Unlike the provisions relating to drawback, where realisation of sale proceeds is a requirement for grant of drawback, in the present case, as far as nominated agencies are concerned, the notification requirement will be limited to physical export of jewellery out of the country by using the gold imported. Once that is established by submitting relevant shipping bill, bill of lading etc., then the fact of export of jewellery by using the gold issued is proved.
8. Logically, there cannot be a demand for payment of duty on the gold imported when, as a matter of fact, such gold has been used for making jewellery that has been exported out of the country. Or, in other words, there is no domestic consumption of the gold imported and that being the case, the question of demand of duty on such gold will be without legal authority. Realisation of sale proceeds for the jewellery exported is another aspect and other agencies are having powers to proceed against the exporter with regard to non-realisation of the sale proceeds but not against the nominated agencies/banks.



9. The Circular No.27/2016-Cus. dated 10.06.2016 issued by the Central Board of Excise and Customs does not, in express terms, stipulate that the nominated agencies should provide to customs, bank certificate as one of the documents for cancellation of the bond executed by them. It stipulates that exporters should submit to the nominated agencies shipping bill copy and bank certificate. To this extent the above circular goes beyond the conditions stipulated in the notification with regard to production bank certificates for realisation of export proceeds. It is settled legal position that authorities cannot impose additional conditions beyond the conditions already stipulated in the notification by way of instructions/circulars.
10. In this regard, we would like to invite your attention to the decision given by the Tribunal at Bangalore in the case of **Bank of Nova Scotia [2009 (233) E.L.T. 260 (Tri.-Bang)]** where, in very clear terms, the Tribunal has held that duty cannot be recovered from the bank on the ground that bank certificate for realisation of export proceeds is not submitted. Though that decision relates to an earlier period, as such, there is no basic change in Notification No.57/2000 with regard to the requirements to be complied with for export of jewellery under the scheme for 'export against supply by nominated agencies.' Thus, this decision will be relevant even today. We are enclosing a copy of the above decision for your reference and record.



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Encl.: As above

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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.