

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

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 199 of 2007

[Arising out of Order-in-Original No.18/2006 dated
5.1.2007 passed by the Commissioner of Central
Excise, Mangalore.]

M/s. ABHARAN JEWELLERS

CORPORATION BANK ROAD,
UDUPI - 576 101.

Appellant(s)

VERSUS

**Commissioner of Central
Excise**

7TH FLOOR, TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE - 575003
KARNATAKA

Respondent(s)

WITH

**1. Central Excise Appeal No.200 of 2007 (Sri Subhas M.
Kamath, Partner, M/s. Abharan Jewellers vs.
Commissioner of Central Excise, Mangalore.)**

(Arising out of Order-in-Original No.18/2006 dated 5.1.2007
passed by the Commissioner of Central Excise, Mangalore.)

**2. Central Excise Appeal No.547 of 2008 (M/s. C.
Krishnaiah Chetty & Sons Private Limited vs.
Commissioner of Central Excise, Bangalore.)**

(Arising out of Order-in-Original No.10/2007 dated 31.03.2008
passed by the Commissioner of Central Excise, Bangalore.)

**3. Central Excise Appeal No.548 of 2008 (Shri Vinod
Hayagriv, Managing Director of M/s. C. Krishnaiah Chetty
& Sons Private Limited vs. Commissioner of Central
Excise, Bangalore.)**

(Arising out of Order-in-Original No.10/2007 dated 31.03.2008
passed by the Commissioner of Central Excise, Bangalore.)

**4. Central Excise Appeal No.549 of 2008 (M/s. Abharan
Jewellers, Bangalore vs. Commissioner of Central Excise,
Bangalore.)**

(Arising out of Order-in-Original No.11/2007 dated 31.03.2008 passed by the Commissioner of Central Excise, Bangalore.)

5. Central Excise Appeal No.550 of 2008 (Shri Pratap Kamath, CEO of M/s. Abharan Jewellers, Bangalore vs. Commissioner of Central Excise, Bangalore.)

(Arising out of Order-in-Original No.11/2007 dated 31.03.2008 passed by the Commissioner of Central Excise, Bangalore.)

6. Central Excise Appeal No.3088 of 2012 (M/s. Abharan Jewellers, Shimoga vs. Commissioner of Central Excise, Mysore.)

(Arising out of Order-in-Appeal No.351/2012 dated 03.08.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

Appearance:

S/Shri S. Raghu/Raghavendra B. Hanjir, Advocates [G.SAMPATH & S. RAGHU] For the Appellant M/s. Abharan Jewellers

Shri K. S. Ravi Shankar, Sr. Advocate and S/Shri N. Anand and Md. Rahim, Advocates [K. S. RAVI SHANKAR & ADVOCATES] for the appellant M/s. C. Krishnaiah Shetty & Sons.]

Mrs. D. S. Sangeetha and Mr. P. Saravana Perumal, Additional Commissioners, Authorised Representatives for the Respondent.

CORAM

HON'BLE DR. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20693 to 20699 /2023

Date of Hearing: 15/03/2023

Date of Decision: 14/07/2023

Per : R. BHAGYA DEVI

All these appeals deal with identical issues and hence, are being considered for a decision through this common order.

2. The details of the orders under appeal are given herein below:

Appeal No.	Appellant	Period	Duty	Penalties	Impugned order
E/199/2007	Abharan Jewellers	1.3.2005 to 31.3.2006	Rs. 68,38,660/-	Equal penalty under Section 11AC and Rs. 10,000 under Rule 25	OIO No. 18/2006, dated 22-12-2006
E/200/2007	Subhas M. Kamath		-	Rs. 1,00,000/-	
E/547/2008	C. Krishnaiah Chetty & Sons Pvt. Ltd.	1-3-2005 to 30-11-2005	Rs. 1,37,00,571/-	Equal penalty under Section 11AC	OIO No. 10/07, dated 31-3-2008
E/548/2008	Vinod Hayagriv	-do-	-	Rs. 13,70,000/-	-do-
E/549/2008	Abharan Jewellers	-do-	Rs. 31,40,607/-	Equal penalty under Section 11AC	OIO No. 11/07, dated 31-3-2008
E/550/2008	Pratap Kamath, CEO	-do-	-	Rs. 3,10,000/-	OIO No. 10/07, dated 31-3-2008
E/3088/2012	Abharan Jewellers	01.3.2005 to 15.12.2005	Rs. 18,05,060/-	Equal penalty under Section 11AC	OIA No. 351/2012, dated 3-8-2012

3. The appellants in all these cases are engaged in manufacturing of articles of jewellery. With effect from 1-3-2005, excise duty was imposed, as a budgetary measure, on branded jewellery. The Notification No. 4/2005, dated 1-3-2005 prescribed duty at the rate of 2% on such branded jewellery. When these appeals were heard earlier, this Tribunal vide its Interim Order No.36 – 42/2018 dated 16.2.2018 at para 8.1 and 9 held that:

“8.1 During the course of arguments, it has come to notice that there are contradictory decisions by different Division Benches of this Tribunal dealing with identical facts. In the case of Titan Industries (supra) relied upon by Revenue, the Chennai Bench of the Tribunal has taken a view that the jewels embossed with such marks are branded jewellery and chargeable to Central Excise duty. However, the Delhi Bench of the Tribunal in the case of CCE v. Anopchand Trilokchand Jewellers P. Ltd. (supra) has taken the opposite view, holding that these marks are not brand names but are in the nature of jewellers mark and hence, no excise duty is chargeable on such jewellery.

9. Since there are contradictory views expressed by two different Division Benches of the Tribunal on the identical issue, we direct the Registry to place the matters before the Hon’ble President for setting up a Larger Bench to decide this issue.”

Accordingly, these appeals were placed before the Larger Bench to decide the limited issue on brand name and eligibility of the benefit of the Notification No. 4/2005 dated 1.3.2005.

4. The Larger bench vide its Interim Order No.6-12/2020 dated 26.02.2020 held as follows:

“21. It is, therefore, difficult to perceive any conflict between the aforesaid two decisions of the Tribunal in Anopchand Trilokchand and Titan Industries, as the decisions were based on the facts of the case. In Anopchand Trilokchand the jeweller had a different trade mark/brand name, which mark had not been indelibly embossed on the article of jewellery as only two letters “AT” were embossed. In *Titan Industries*, the jeweller was engaged in the manufacture and sale of jewellery with brand name “TANISHQ” and when excise duty was levied with effect from 1 March, 2005, it started paying excise duty, but subsequently started embossing alphabets “Q” and “I” on the jewellery, which the Tribunal found indicated a connection between the product and the company. The Tribunal also found

that in addition thereto, marks “AEI” and “AE” were also embossed to indicate the person who manufactured the jewellery.

4.1 The Larger bench referring to the decision of the Tribunal in **MMTC vs. Commissioner of Central Excise, Delhi-I [2018 (362) E.L.T. 647 (Tri. - Del.)]**, held that:

“23. Thus, what has to be seen in each case is whether the brand name or trade name, which could be a mark used in relation to the product, indicates a connection in the course of trade between the product and some person using such name or mark with or without any indication of the indentify of that person.

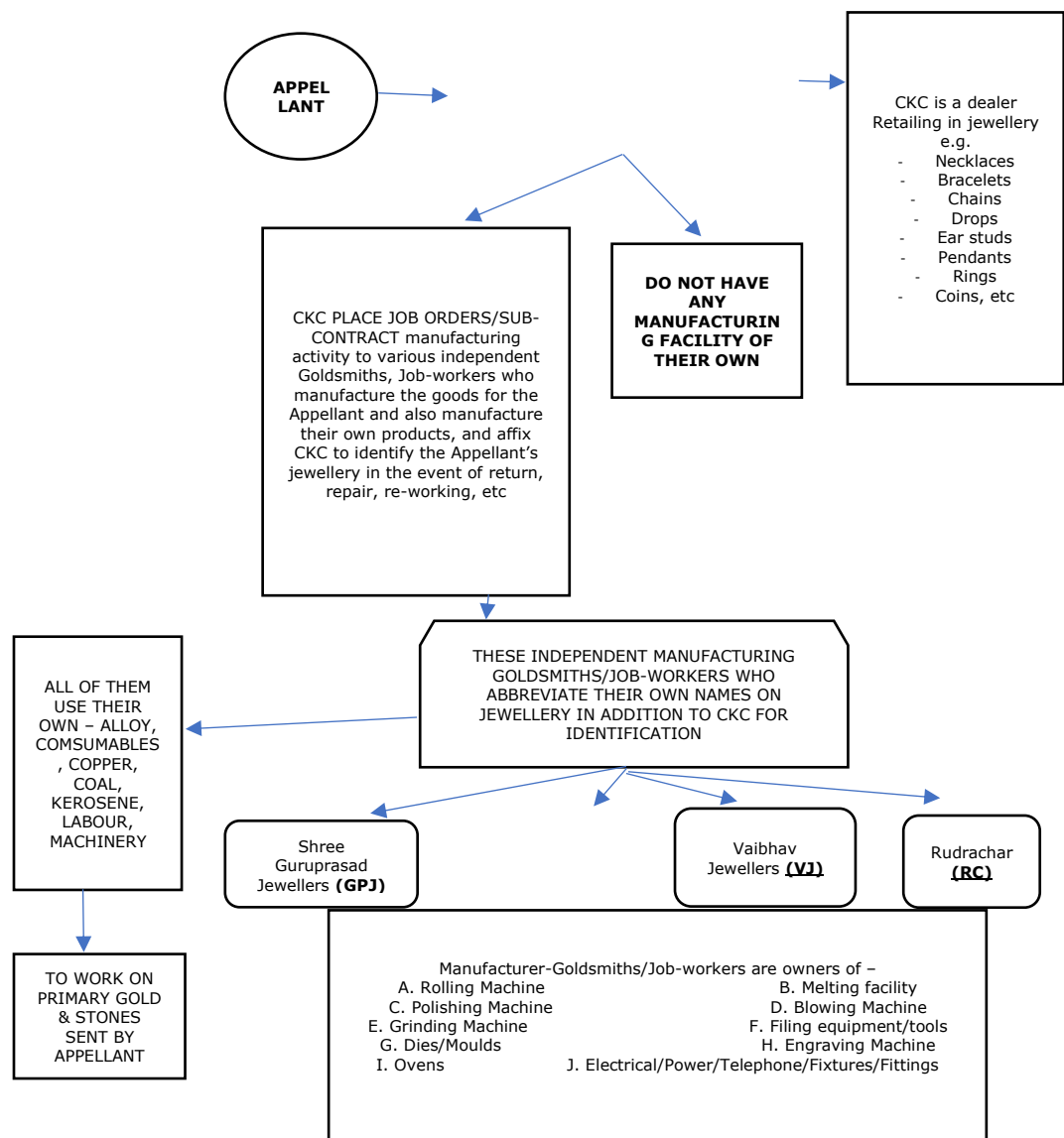
24. Though Learned Counsel for the appellant and the Learned Authorized Representative of the Department have also made submissions on merit, it would not be necessary for this Larger Bench to decide them as it is the Division Bench which would have to decide the issues on merits.

25. The papers may, therefore, be placed before the Division Bench concerned with the aforesaid opinion of the Larger Bench for deciding the appeals on merit.”

5. Based on the above observations of the Larger Bench, these appeals are before us to decide whether the brand name indicates a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

6. On behalf of the appellants, the case was mainly argued by Learned Sr. Counsel Shri K. S. Ravi Shankar, and Shri N. Anand, Counsel. The Learned Counsel, in the case of C. Krishnaiah Chetty

& Sons Pvt Ltd. has produced the flow chart to prove their point that they are not the manufacturers of articles of jewellery.



7. They contended that the person who engages in the activity of converting the raw material into a finished product should be legally construed as the manufacturer of a product. Ownership of raw material is irrelevant, and the sale price collected by the owner of raw material has no bearing on the *activity of* manufacture as held by the Supreme Court in **CCE v. MM Khambatwala: 1996 (84) ELT 161 (SC)** and **Empire Industries v. UOI: 1985 (20) ELT 179 (SC)**. Thus, the

goldsmiths and job workers in question were the manufacturers and not the Appellant(s).

8. The Appellant(s) submitted that in the case of **Indian Rayon and Industries Limited v. CCE: 2007 (212) ELT 358 (Tri-Bang.)** affirmed by the Supreme Court in **2015 (325) ELT 635 (SC)**, in the context of job work on readymade garments vis-à-vis rule 12B of the Central Excise Rules, 2002 the Tribunal held that the Appellant therein (M/s. Levi Strauss India Pvt Ltd in E/1003/2005) could not be held to be the manufacturer and no duty liability would arise on them for the goods manufactured by the job workers who carried out manufacturing operations out of the material supplied by the Appellant. The Appellant therefore submit that no demand can be made against them where the products were made by the jobbers out of the materials supplied by them invoking rule 12AA of the Central Excise Rules, 2002 as the said rule cannot eclipse the charging provision in Section 3 read with Section 2(f) of the Act.

9. On the issue of brand name, the same issues that were placed before the Larger Bench was put forth. It was argued that the usage of abbreviated version of their own name **"CKC or ABJ"** would not be in the nature of use of "brand name or trade name" for the following reasons –

- (a) "CKC or ABJ" are an indication of the Appellant(s) himself/identity of the Appellant(s). They are in the nature of house-mark. These house-marks are required

for hallmarking *purposes* under the dispensation of BIS guidelines under the Bureau of Indian Standards Act, 1986 which was re-enacted in 2016 by Parliament.

- (b) The evidence on record in the proceedings in the form of depositions of witnesses and record of cross-examination and mahazar proceedings demonstrate the usage of the alphabets "CKC or ABJ" for compliance with the BIS guidelines. The Appellants are BIS registered.
- (c) Apart from hallmarking purposes, these are used as house-mark of the respective jewellery dealers for various purposes such as identifying the dealer from whom it was brought in the event of customers returning the jewellery either for repair or remaking or otherwise.
- (d) The registered trade mark of the Appellant is entirely different and is their full registered/ incorporated name of C. Krishnaiah Chetty and Sons P. Ltd., name along with "diamond and chain" as evident from the certificate.
- (e) The advertisements on hoardings relied on by the department are only advertisements of stores of the Appellant(s) and are not evidence of affixation of brand name or trade name.
- (f) The Appellant(s) relied on the decision of the apex court in ***Astra Pharmaceuticals v. CCE, 1995 (75) ELT 214 (SC)***, in which the Court held that an emblem, word or both, is a device called **House Mark**, intended as an

identification of the maker. But a brand name is different and is for identification of a product.

(g) The Appellant(s) also relied on the following decisions:

- In **Tarai Foods Ltd v. CCE: 2006 (198) ELT 323 (SC)**

it was held that a brand name connoted a mark, symbol or design unique to particular manufacturer which would establish a connection between the product and the manufacturer. Such name or mark etc cannot be the identity of the person itself.

- In **Electrohms Pvt Ltd v. CCE, 2000 (116) ELT 265**

(Tri.), it was held that affixation of the name *Indian Railways* on the electric point machine for use on the railway tracks could not be considered as brand affixation and such a monogram used on the product manufactured should not be treated as use of brand name.

10. The Appellant further stated that a substantial part of the demand raised by the Respondent for the period 01.03.2005 to 31.10.2005 is barred by limitation under Section 11A of the Central Excise Act, 1944 since the show-cause notice has been issued for the above period after the expiry of one year from the “relevant date” as required u/s 11A. Hence, the confirmed demands are barred by limitation in as much as the invocation of extended period of limitation as also imposition of mandatory penalty under section 11AC of the Act cannot be sustained.

11. The Learned Authorised Representative representing Revenue, took us through the relevant notification and its explanation as well as the CBEC Circular dated 4-3-2005. Her submissions are summarized as below:

- (i) She took us to the Hon'ble Finance Ministers speech where the Hon'ble Finance Minister stated, "... expensive and premium jewellery is now manufactured and sold under alluring brand names. On such branded jewellery, I propose to levy an excise duty of 2 per cent. I may clarify that there is no levy on unbranded jewellery, including unbranded gold jewellery. It is thus clear that for attracting this levy, the article of jewellery must be marketed and sold under a brand name". Thus, submitted that the intention of the legislature was to tax the high-end manufactures of gold jewellery who had established their brand name in the market.
- (ii) Referring to the explanation in the notification, she submitted that any mark or symbol or monogram, etc., which is used in relation to the product and which indicates a connection in the course of trade between the product and some person using such name or mark is to be considered as 'Brand Name'. She further submitted that the abbreviations such as 'CKC' or 'ABJ' clearly indicate a connection between such symbols and jewelers selling such jewellery. Hence, the goods articles of jewellery sold by the appellants fall within the category of branded jewellery which is liable to excise duty.

- (iii) Referring to the Circular dated 4-3-2005, she emphasised that the marketing of the products through various hoardings and various advertisements clearly showed a connection between the product and the manufacturer. In commercial parlance, the name of CKC/Abharan jewellers as understood by the common man is seen from the statement of jewellers, customers and advertising agencies which form part of the investigation.
- (iv) She also referred to Para 15(e) of the OIO NO 10/2007 dated 31.03.2008 to submit that *Shri C.M. Krishna Kumar of Bangalore, a customer, in his statement dated 2-05-2006 stated that he had purchased a finger ring from M/s. Krishnaiah Chetty & Sons Pvt Ltd., because of their assurance of quality and genuine product; that the abbreviation "CKC" embossed on the jewellery he had purchased and that he is of the opinion that "CKC" stands for the brand C. Krishniah Chetty & Sons and that he understands by the advertisement that M/s C. Krishniah Chetty & Sons is a name in jewellery business."*
- (v) Referring to various advertisements the AR submitted that advertising the product plays a significant role in creation of the brand name. The appellants have made conscious effort to popularise their brands through these advertisements. Again, reliance is placed on the paragraphs 16 to 18 of the impugned order where it is stated that discrete enquiries caused and invoices obtained from these advertising agencies revealed that large

amounts were spent by these manufacturers to popularise their brands. M/s CKC have incurred expenditure of Rs.26,08,643/ during 2004-05 and Rs.44,59,171/- during 2005-06 only towards Hoarding Display Charges. Similar is the case of that M/s. Abharan Jewellers who have been involved in the brand building exercise which involves quality of the product, positioning in the market and communication by using all elements of promotional mix, under their registered brand. They have also had an expenditure of Rs 6,52,765. These figures of expenditure quoted in the Order in Original has not been challenged or disputed by the appellants which proves beyond doubt that the appellants have engaged in the exercise of advertising their products and build a brand for themselves and therefore become liable for the payment of duty.

- (vi) The AR also submitted that during the investigation, the officials, of M/s. Titan Industries Limited, and Shri. Sathyan of M/s. Ganjam Nagappa, Gold Jewellers, as well as a customer were able to link the words "CKC" to the Appellant.
- (vii) She also relied on the decision rendered in the case of ***Titan Industries Ltd. v. CCE, Chennai : 2016 (337) E.L.T. 250 (Tri.-Chennai)*** in which an identical matter has been considered by the Tribunal with reference to the same Notification No. 4/2005 and similar goods manufactured and sold by M/s. Titan Industries. She submitted that the Tribunal in the above case has taken the

view that the letters "Q" and "I" embossed on the jewellery by M/s. Titan Industries have been held as 'Brand Name' for the purposes of the above Notification and the Tribunal has held that excise duty is payable.

- (viii) She also rebutted the submission of the Learned Counsel on behalf of the appellant that the excise duty if at all payable has to be paid by the goldsmiths who had actually made the articles of jewellery. She referred to Rule 12AA of the Central Excise Rules, 2002 which was introduced into the statute with effect from 1-3-2005, the date on which the levy of excise duty was introduced on branded jewellery. As per the terms of this Rule, excise duty is to be paid by the person who gets the articles of jewellery produced or manufactured on his behalf on job work basis. She also submitted that the various decisions relied upon by the counsel were of no relevance as Rule 12AA was specifically introduced in the year 2005 to bring these jewellery manufactures under the excise net. Finally, She submitted that the impugned orders may be upheld and appeals dismissed.

12. Heard both the counsels on behalf of the appellants and the Authorized representative on behalf of the revenue. The fact that all the articles of jewellery are got manufactured through various job workers is not disputed. It's also a fact that on each of these articles of jewellery name of the manufacturer is embossed, CKC in the case M/s. C. Krishnaiah Chetty & Sons Pvt. Ltd. and ABJ by

M/s. Abharan Jewellers and they were sold through their Showrooms or their retail shops at various places. The trade name was also registered with the respective authorities concerned. All these manufacturers advertised their products through various channels like print media, TV ads and on various other modes of advertisement in order to popularize their products.

13. In 2005-06 Budget, the Government imposed excise duty of 2% on branded articles of jewellery of Heading 7113 of Central Excise Tariff. The duty is leviable only on the jewellery where the brand name or trade name indelibly affixed or embossed on the articles of jewellery itself. Necessary amendment was brought in Chapter 71 and Chapter Note 12 and Chapter Note 13 was inserted. Chapter Note 12 defined "brand name" or "trade name" of jewellery and Chapter Note 13 specified that the process of affixing or embossing trade name on the articles of jewellery of Heading 7113 shall amount to "manufacture". The corresponding Central Excise Notification Nos. 4/2005 (Sl. No. 14) and 5/2005 (Sl. No. 171) both dated 1-3-2005 were issued. The relevant Chapter Note 12 of Chapter 71 are produced as under:

"12. In this Chapter, "brand name" or "trade name" means a brand name or trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented words or any writing which is used in relation to a product for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

For the purposes of heading 7113, the processes of affixing or embossing trade name or brand name on articles of jewellery shall amount to "manufacture".

The relevant Sl. No. 14 of the Notification No. 4/2005 and the *Explanation* to the Notification is reproduced as under:-

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Rate under the First Schedule	Rate under the Second schedule
(1)	(2)	(3)	(4)	(5)
14.	7113	Article of jewellery on which brand name or trade name is indelibly affixed or embossed on the articles of jewellery itself.	2%	-

Explanation. - For the purposes of this notification, ‘brand name or trade name’ means a brand name or trade name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

14. Board’s Circular dated 4-3-2005 is reproduced as under:

Government of India
Ministry of Finance (Department of Revenue)
Tax Research Unit

Subject: Excise duty levy on branded articles of jewellery.

In this year’s budget 2005-06, an excise duty of 2% has been imposed on branded articles of jewellery of heading 7113 of the Central Excise Tariff. The duty is leviable only if the brand name or the trade name, as defined, is indelibly affixed or embossed on the article of jewellery itself.

In this context, relevant extracts of Finance Minister’s budget speech is reproduced below:

“... expensive and premium jewellery is now manufactured and sold under alluring brand names. On such branded jewellery, I propose to levy an excise duty of 2 per cent. I may clarify that there is no levy on unbranded jewellery, including unbranded gold jewellery.”

It is thus clear that for attracting this levy, the

article of jewellery must be marketed and sold under a brand name. Despite this, there have been some misgivings among a section of the trade about the scope of this levy, To allay the apprehensions of the trade, some illustrations are given below to explain the scope of this levy :

(i) A jeweller "ABC Jewellers" gets his articles of jewellery, from goldsmiths/job workers who put a mark/sign/initials, etc. on the article of jewellery. This is only to identify that the article of jewellery was received from a particular goldsmith, etc. This is not branded jewellery and will not attract the tax.

(ii) "ABC jeweller", when it sells articles of jewellery to customers, puts a distinctive sign/mark/initials etc. on the jewellery. This is again for the purpose of identification so that when the jewellery is returned to ABC jewellers, they will recognize the jewellery as their own. ABC jewellers does not sell the jewellery under a brand name. This again is not branded jewellery and will not attract the tax.

(iii) "ABC jewellers" advertises and sells its products under the brand Star, It also puts the same brand name or an abbreviation thereof or a mark which has a connection with such brand name on the article of jewellery. Such jewellery will be branded jewellery and will be liable to the tax.

3. As regards "hallmarked" gold jewellery, it is observed that hallmarking is the accurate determination and official recording of the proportionate content of precious metal in gold. Hallmarks are thus only official marks used as a guarantee of purity or fineness of gold jewellery, and cannot be treated as 'branding' for the purposes of the excise levy.

4. Whether a particular name or mark or symbol etc. is a brand name or not is a matter of fact, and can be ascertained as how the name is understood in commercial parlance. In the jewellery trade, there are certain well known brand names like 'Tanishq', 'Sangini', etc. and the scope of the levy is only with respect to jewellery marketed and sold under such brand names as clearly, understood in the trade. It is requested that the gold dealers/manufacturers associations may be suitably briefed about the scope of the excise duty levied on branded articles of Jewellery so that there is no inconvenience to the trade.

Branded precious metal jewellery — Levy of Excise duty —

**Clarifications Instruction F. No. 354/38/2011-TRU,
dated 2-3-2012**

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

*Subject : Clarification regarding levy of Excise duty on
branded precious metal jewellery - Regarding.*

I am directed to refer to D.O.F. No. B-1/3/2011-TRU, dated 25-3-2011 at the post-budget stage 2011-12 containing the following clarification about the scope of Central Excise levy applicable to precious metal jewellery of CETH 7113 manufactured or sold under a brand name :

“ABC jewellers” advertises and sells its products under the brand “Star” or puts a logo like ABC i.e. in a stylized manner. It also puts the same brand name or an abbreviation thereof or a mark which has a connection with such brand name either on the jewellery or article itself or on the packing such as the jewellery box or pouch or even on the warranty card or certificate of quality. Such goods will clearly be treated as branded and will be liable to duty.”

2. It is learnt that based on the said clarification some enquiries have been initiated by the departmental agencies seeking to demand duty on such articles of jewellery which are packed in boxes, pouches etc. bearing a trade name or brand name or mark. References have since been received from the Trade requesting for providing clarity on levy of excise duty on jewellery sold under a Brand name. The industry has drawn attention to condition no. 8 of notification no. 5/2006-C.E., dated 1-3-2006 which provides that *the exemption shall not be applicable to articles of jewellery of heading no. 7113 on which brand name or trade name is indelibly affixed or embossed on the articles of jewellery itself*. It has been argued that accordingly only such jewellery where brand name or trade name is indelibly affixed or embossed on the articles of jewellery itself should attract excise duty and duty should not be charged on the articles which do not themselves bear such marking but which are packed in a jewellery box or pouch bearing a trade name or brand name or in whose case, the warranty card or certificate of quality issued at the time of sale bears a trade name or brand name.

3. The issue has been examined. Condition no. 8 of notification no. 5/2006-C.E., dated 1-3-2006, is also relevant in this regard. The said condition provides that *“the exemption shall not be applicable to articles of jewellery of heading no. 7113 on which brand name or trade name is indelibly affixed or embossed on the articles of jewellery itself.”*

4. It is clarified that the excise duty leviable on precious metal jewellery, manufactured or sold under a brand name, is attracted only on such jewellery on which the trade/brand name or any such mark or symbol or even a number which is cross referred with such trade/brand name (not being a house

mark used by jewellers for identification of jewellery at the time of exchange/resale) is indelibly marked or embossed. If such brand name is not affixed or embossed on the jewellery or article itself but appears on the packing such as the jewellery box or pouch or even on the warranty card or certificate of quality, such goods will not be treated as branded jewellery and thus will not be liable to excise duty. The clarification issued in this regard vide D.O.F. No. B-1/3/2011-TRU, dated 25th March, 2011 stands modified to this extent.”

15. Its pertinent to note that for the first time 2% tax was levied on branded jewellery from 1st March 2005. From the Hon'ble Finance Minister statement made in her budget speech it could be inferred as to what is branded jewellery and who are to be taxed, clearly spelling out the intention of the legislature. The TRU letter dated 4th March 2005, which is extracted above once again reiterated the intention of the legislature. At para 2 and para 4 as extracted below one can clearly state the category of jewellery manufacturers that are to be taxed.

“2.... expensive and premium jewellery is now manufactured and sold under alluring brand names. On such branded jewellery, I propose to levy an excise duty of 2 per cent. I may clarify that there is no levy on unbranded jewellery, including unbranded gold jewellery. It is thus clear that for attracting this levy, the article of jewellery must be marketed and sold under a brand name. Emphasis supplied.

3.....

4. Whether a particular name or mark or symbol etc. is a brand name or not is a matter of fact, and can be ascertained as how the name is understood in commercial parlance. In the jewellery trade, there are certain well-known brand names like 'Tanishq', 'Sangini', etc. and **the scope of the levy is only with respect to jewellery marketed and sold under such brand names as clearly, understood in the trade.** It is requested that the gold dealers/manufacturers associations may be suitably briefed about the scope of the excise duty levied on branded articles of Jewellery so that there is no inconvenience to the trade. Emphasis supplied.”

16. The Hon'ble Supreme court in the case of **Commissioner of Customs (Import), Mumbai Versus Dilip Kumar &**

Company: 2018 (361) ELT 577 (SC) Held that:

“16. The purpose of interpretation is essentially to know the intention of the Legislature. Whether the Legislature intended to apply the law in a given case; whether the Legislature intended to exclude operation of law in a given case; whether Legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be sought only by knowing the intention of the legislation. Apart from the general principles of interpretation of statutes, there are certain internal aids and external aids which are tools for interpreting the statutes.

18. It is well accepted that a statute must be construed according to the intention of the Legislature and the Courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature. In this connection, the following observations made by this Court in *District Mining Officer v. Tata Iron and Steel Co.*, (2001) 7 SCC 358, may be noticed :

“... A statute is an edict of the Legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises the difficulties because of various reasons, in as much as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one’s thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention, i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the

enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed...”

17. From the Budget speech of the Hon'ble Finance Minister the intention of the legislature is to tax those jewellery manufacturers who sell expensive and premium jewellery under alluring brand names and their marketing strategy. What is branded jewellery as per definition of the act its nothing but a mark used in relation to the product, indicates a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identify of that person. This mark can be registered mark or unregistered mark. In these appeals the marks of the manufacturer are found on the jewellery articles is not under dispute. The only dispute is that they are only house marks for identification and not a trade name or brand name. Let's analyse these facts.

18. A peek into their website of CKC jewellers clearly indicates that their products are premium expensive and alluring. The extract from their website is as follows:

“The repository of thousands of jewellery designs at C. Krishnaiah Chetty Group of Jewellers varies from simple beads to complex studded jewels, a vast collection of unique products that have been custom-made for the Rajas, the Maharajas, the Nawabs, Celebrity, Industrialist and the Commoner. A collaboration with skilled artisans and the best designers drew upon the innovative designs, leading C. Krishnaiah Chetty to win awards globally. From being a traditional jeweller, they have encompassed to cater to a broad section of generations, especially Gen Z. his collaboration led to the creation of limited edition or one-of-a-kind pieces to enhance the exclusivity and uniqueness of the jewellery line. This has added value and

intrigue for collectors and individuals seeking distinctive jewellery. The Alluring Charm of Bracelets. There are many different types of bracelets to choose from, and the best one for you will depend on your style, budget, and the occasion for which you plan to wear it. Our goldsmiths have upgraded themselves, beginning by brainstorming ideas and conceptualizing the designs by combining traditional jewellery-making techniques with innovative approaches to produce unique textures, shapes, or effects, experimenting with laser cutting and 3D casting to create intricate and detailed components that would be difficult to achieve through traditional methods. Today with six luxurious boutiques and showrooms across Bangalore C. Krishnaiah Chetty group is referred to as trendsetter in quality in craftsmanship, and premium luxurious designs”.

19. Similarly in the case of Abharan Jewellers, in their advertisements state that:

“We offer an extensive range of stunning pieces that will leave you spellbound. Our collections are crafted with love and care, making sure each piece is unique, elegant, and classic. Our mission is to provide you with the highest quality and certified jewellery that will elevate your style and make you feel special. Abharan Jewellery brand is a well-known, trustworthy and respected brand in India.

Abharan Jewellers is known for its exquisite designs and high-quality BIS Hallmarked jewellery, including gold, diamond, platinum, and silver pieces. The company offers a wide range of jewellery collections, including traditional, contemporary, and fusion designs to suit different tastes and occasions. The brand is known for its excellent customer service and has won several awards for its quality and innovative designs. Our collection features exquisite pieces crafted from 18k and 22k (916) BIS Hallmarked gold. our jewellery is designed to elevate any outfit. Our exquisite collection of diamond jewellery is sure to leave

you spellbound. From classic solitaire rings to delicate diamond necklaces and stunning diamond earrings, we offer a wide range of designs to suit every taste and occasion. Our diamonds are ethically sourced and expertly crafted to ensure the highest quality and brilliance among the 4C's. Abharan sells VVS-clarity EF-colour GIA IGI and SGL certified diamonds”.

20. During the investigations it was observed that an affidavit had been filed with the office of the Registrar of Trade Marks, Chennai under the Trade Marks Act, 1999 where the declaration has been made to the effect that they have adopted Trade mark 'ABHARAN'. Shri Subhas M Kamath Partner of M/s. Abharan Jewellers in his statement dated 16.12.2005 and 13.06.2006 admitted that they have made an application for registration of Logo and Marking 'ABHARAN' before the Registrar of Trade Mark, Chennai. The photographs also show the markings as 'ABJ' on the articles of jewellery. At no given point of time, they have withdrawn these statements.

21. From the above its clear that expensive, premium and branded jewellery are manufactured, marketed and sold by the appellants which are liable for tax at the rate of 2%. From the facts of the present cases as discussed in the impugned order there is no doubt that the name of the manufacturer CKJ and ABJ is written on each article of jewellery as is the requirement of the notification. Whether this name or initials draw any connection between the manufacturer and the product can be clearly established through the various advertisements, hoardings and

their elegant and most vibrant expensive showrooms. The statements recorded from the customers it clearly shows that the jewellery is identified with the manufacturer.

22. In the case of **Commissioner of Central Excise, Trichy Versus Grasim Industries Ltd. 2005 (183) ELT-123 (SC)**, the Apex court was dealing with the case where the Respondents was a subsidiary of one M/s. Grasim Industries Ltd. On the bags of cement manufactured by them the Respondents had used the following words:

"Manufactured by Dharani Cements Ltd.
A. Subsidiary of Grasim Industries Ltd."

23. Based on the facts of that case the Apex Court observed that "In our view, the Tribunal was clearly erroneous. As indicated above, the Explanation makes it clear that it need not be a trade name or brand name as commonly understood. Any name or mark or writing, even the name of a company is sufficient so long as it is used for the purpose of indicating a connection between the product and that Company. The use of the words "A quality product from ITL group" clearly showed an intention to show a connection between the product and the ITL group. These words indicated that the quality of the product was the same as that of a product of ITL group. If use of such words did not disentitle a party from the benefit of the Notification, we fail to understand what sort of words would disentitle a party. The decision of the Tribunal in this case is clearly erroneous and will stand overruled".

24. In the case of **Kail Ltd. Versus State of Kerala: 2018 (12) GSTL 226 (SC)**, the issue was with regard to the tax under Section 5(2) of the KGST Act on sales turnover of home appliances for Rs. 27,27,20,230/- on the ground that the appellant-Company had sold the home appliances under the brand name "Sansui". The Assessing Authority - the respondent-State, while scrutinizing the second sale exemption as claimed by the appellant-Company Kail Ltd., found that it is the brand name holder of "Sansui" and hence the turnover of the items sold under "Sansui" brand name was treated as first sale under Section 5(2) of the KGST Act. The Apex after proving the appellant was a subsidiary company made the following observations:

"14. Brand name has no relevance when the products are manufactured and sold in bulk by the holding company to its subsidiary company for marketing. However, the brand name assumes significance when goods are marketed with publicity in the market. Moreover, when the goods are sold under the brand name, necessarily, it has to assume that the marketing company is the holder of the brand name or has the right to market the products in the brand name because, it is the first company introducing the products in the market. The objective of Sec. 5(2) of KGST Act is to assess the sale of branded goods by the brand name holder to the market and the *inter se* sale between the brand name holders is not intended to be covered by Sec. 5(2) of the KGST Act".

25. What follows from the above decisions is that the brand name is established through the marketing strategy adopted by the companies. So, the definition of brand name to

find a connection with the trade is clearly established by the ways and means the products are publicised and marketed to woo the customers and establish their brand in the market. The fact that huge amounts were incurred by all these appellants towards hoardings and various other modes of advertisement stands testimony to their strategy to establish their brand and woo the customers.

26. In the present case the articles of jewellery itself were embossed with the name of the manufacturer and the products were widely advertised to attract the customers in buying their products for the quality and craftsmanship of their products. As held by the Apex court the intention was very clear and specific and the legislature intended to tax only those jewellery manufacturers who had established their brand in the market.

27. Now let's examine the fact that whether it is merely a house mark or trade mark (brand name). The appellant has relied on Astra pharmaceuticals to prove their point of view that it is only a house mark.

28. In the case of **Commissioner of Central Excise, Mumbai vs. Kalvert Foods India Pvt. Ltd.: 2011 (270) E.L.T. 643 (S.C.)**, the issue was whether the Appellant had cleared the goods under question under any brand name. The Tribunal had held that because the brand name "Kalvert" was not registered in their name therefore it cannot be held that respondents were using 'brand name'. The Tribunal further held that the name on

the goods manufactured and cleared by the respondent in the market could at best be termed as "House mark" and not brand name/trade name. The Apex court on the above issues observed as follows:

"31. In our considered opinion, the aforesaid findings are also totally wrong and recorded in violation of the law of Trade Marks.

32. We may also refer to another decision of this Court in *Astra Pharmaceutical Pvt. Ltd v. Collector of Central Excise, Chandigarh*, reported in 1995 (75) E.L.T. 214 (S.C.). That was a case of Pharmaceutical product. In the said decision also the manner and scope of "Brand name" and distinction between 'House mark' and "Product mark/Brand name" has been brought out. It was stated therein by this Court that "House mark" which is usually a device in the form of an emblem, word or both is an identification of the manufacturer which is compulsory under the Drug Rules. On the other hand, product mark or brand name is invariably a word or a combination of a word and letter or numeral by which the product is identified and asked for. In paragraph 6 of the said Judgment, ***Narayanan's Book on Trade Marks and Passing-Off*** was also referred to and since the same may have a bearing to the facts of the present case, it is extracted herein below:

"In the pharmaceutical business a distinction is made between a House mark and a Product mark. The former is used on all the products of the manufacturer. It is usually a device in the form of an emblem, word or both. For each product a separate mark known as a product mark or a brand name is used which is invariably a word or a combination of a word and letter or numeral by which the product is identified and asked for. In respect of all products both the Product mark and House mark will appear side by side on all the labels, cartons etc. Goods are ordered only by the product mark or Brand name. The House mark serves as an emblem of the manufacturer projecting the image of the manufacturer generally."

33. In the book of **"Trade Marks"** by **Sarkar**, the distinction between the expressions "House mark" and "Product mark" or "Brand name" has been clearly brought out by way of reference to the decision in *Astra Pharmaceutical Pvt. Ltd. (supra)*. It is stated therein that "House mark" is used on all the products of

the manufacturer and that it is usually a device or a form of emblem of words or both. It was also pointed out that for each product a separate mark known as a “Product mark” or “Brand name” is used which is invariably a word or combination of word and letter or numeral by which the product is identified and asked for. It was also stated that in respect of all products both the “Product mark” and “Brand name” would appear side by side on all the labels, cartons etc. and that the “House mark” is used generally as an emblem of the manufacturer projecting the image of the manufacturer, whereas “Brand name” is a name or trade mark either unregistered or registered under the Act.

34. Therefore, it is not necessary that “Brand name” should be compulsorily registered. A person can carry on his trade by using a “Brand name” which is not even registered. But in violation/infringement of trade mark, remedy available would be distinctly different to an unregistered brand name from that of remedy available to a registered brand name.

35. Unfortunately, the Tribunal did not consider and properly appreciate the apparent distinction between the two distinct expressions i.e. “House mark” and “Brand name” and thereby proceeded to set aside the well-written Judgment passed by the Commissioner of Central Excise, Mumbai who has recorded his reasons giving cogent basis for his reasoning.

36. In the book of **“Law of Trade Marks”** by **K.C. Kailasam and Ramu Vedaraman** the distinction between ‘Product mark’ and ‘House mark’ has been beautifully delineated, which is as under :

“It is possible that the proprietor may use several trade marks in respect of his goods (known as Product mark), besides using a common mark in all his products to indicate the origin of the goods from the enterprise (known as House mark). This practice is more predominant in the pharmaceutical trade. Though both are trade marks and are registrable as such, each has its own distinct function. While the House mark represents the image of the enterprise from which the goods emanate, the Product mark is the means by which goods are identified and purchased in the market place and it the focal point of presentation and advertisement.” Emphasis supplied

37. In view of above discussion, it is clear that what was being used by the respondent under the expression “Kalvert” was a “Brand name” and not a “House mark” as sought to be alleged by the respondent and has wrongly accepted by the Tribunal. Therefore, the articles of assorted jams, pickles, squashes, cooking sauces, chutneys, syrups, synthetic vinegars etc. manufactured and sold by the respondent company under a brand name “Kalvert” were liable to be charged for excise duty at the rate prescribed in the Excise Law.”

29. The above observations of the Apex court clearly establish the difference between the house mark and the trade mark. In the present case the appellants claim that it was only a house mark for identification. But their advertisements and marketing strategies employed clearly go to prove that they created a connection between the product and the manufacturer to attract the customers. Moreover, whether the brand name is registered or not is immaterial as long as the name CKC and ABJ embossed on the articles of jewellery establish their brand in the market. Therefore, it's clear that the articles of jewellery manufactured and sold by these appellants was branded jewellery. In fact, these appellants had also registered their trademarks with the authorities concerned.

30. Coming to the issue whether the appellants are manufacturers or not let's examine the Rules prevalent during the relevant period.

“RULE 12AA. Job work in [articles of precious metals falling under heading 7114 of the First Schedule to the Tariff Act].

—

[(1) Notwithstanding anything contained in these rules, every person (not being an export-oriented unit or a unit located in special economic zone) who gets articles of precious metals

falling under heading 7114 of the First Schedule to the Tariff Act, produced or manufactured on his behalf, on job work basis, (hereinafter referred to as “the said person”) shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee.]

(2) If the said person desires clearance of excisable goods for home consumption or for exports from the premises of the job worker, he shall pay duty on such excisable goods and prepare an invoice, in the manner referred to in rules 8 and 11 respectively except for mentioning the date and time of removal of goods on such invoice.

(3) The original and the duplicate copy of the invoice so prepared shall be sent by him to the job worker from whose premises the excisable goods after completion of job work are intended to be cleared, before the goods are cleared from the premises of the job worker.

(4) The job worker shall fill up the particulars of date and time of removal of goods before the clearance of goods and after such clearance the job worker shall intimate to the said person, the date and time of the clearance of goods for completion of the particulars by the said person in the triplicate copy of the invoice.

(5) The said person may supply or cause to supply to a job worker, the following goods, namely :-

- (a) inputs in respect of which he may or may not have availed CENVAT credit in terms of the CENVAT Credit Rules, 2004, without reversal of the credit thereon; or
- (b) goods manufactured in the factory of the said person without payment of duty; under a challan, consignment note or any other document (herein referred to as ‘document’) with such information as specified in sub-rule (2) of rule 11 of the Central Excise Rules, 2002, duly signed by him or his authorised agent.

(6) The responsibility in respect of accountability of the goods, referred to in sub-rule (5) shall lie on the said person.

(7) Notwithstanding any thing contained in these rules, the job worker shall not be required to get himself registered or shall not be required to maintain any record evidencing the processes undertaken for the sole purposes of undertaking job work under these rules unless he has exercised his option in terms of the proviso to sub-rule (1).

(8) The job worker, with or without completing the job work may,-

- (i) return the goods without payment of duty to the said person; or
- (ii) clear the goods for home consumption or for exports;

subject to receipt of an invoice from the said person, as mentioned in sub-rule (4).

(9) The job worker shall clear the goods after filling in invoice the time and date of removal and authentication of such details. The rate of duty on such goods shall be the rate in force on date of removal of such goods from the premises of the job worker and no excisable goods shall be removed except under the invoice.

Explanation 1. - For the purpose of this rule, “job worker” means a person engaged in manufacture or processing on behalf and under the instructions of the said person from any inputs or goods supplied by the said person or by any other person authorized by the said person, so as to complete a part or whole of the process resulting ultimately in manufacture of [articles of precious metals falling under heading 7114 of the First Schedule to the Tariff Act], and the term “job work” shall be construed accordingly.”

31. The industry that manufactures and markets the articles of jewellery, it is a well-known fact that unlike other industries there is no manufacturing unit as such. Instead, all the jewellery manufacturers get these articles of jewellery made through large number of artisans and goldsmiths on job work basis. Seeing the nature of business, a new Rule 12AA was introduced which is reproduced above. The Rule very categorically stated that ‘every person who gets articles of precious metals falling under heading 7114 of the First Schedule to the Central Excise Tariff Act, produced or manufactured on his behalf, on job work basis, shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee. It also clearly mentions that ‘the job worker shall not be required to get himself registered or shall not be required to maintain any record evidencing the processes undertaken for the sole purposes of undertaking job work under these rules unless he has exercised his option in terms of the proviso to sub-rule (1). In view of the above Rule the argument

of the appellants that they are not the manufacturers is not sustainable. The fact that these appellants supply gold and other required materials to the job worker and the job worker in turn returns the finished articles of jewellery after embossing the name to the manufacturer is not in dispute. Neither the job workers have come forward to register themselves. Therefore, to claim that they are not the manufactures of articles of jewellery is far-fetched. Section 37 of central excise act 1944 empowers the government to make Rules for assessment and collection of duties. These rules do not have an overriding effect as claimed by the appellants in as much as Rule 12AA has been introduced to specify as to who is the manufacturer liable to be registered in the world of jewellery business. All the decisions relied upon by the appellants have no relevance as these are the decisions rendered prior to the introduction of Rule 12AA.

32. In the case of **Torrent Laboratories Pvt. Ltd. vs. U.O.I: 1991 (955) ELT (25)**, the High Court of Gujarat at Ahmedabad held that:

“It is next contended that Rule 57-I as it stood prior to amendment should be read in conjunction with Section 11A of the Act. It is submitted that if credit is wrongly taken, it would be non-payment of duty or short-payment of duty. Such cases are covered by the provisions of Section 11A of the Act. Section 11-A of the Act is the only provision in the Act regarding the recovery of duty on account of short-payment and/or under assessment. Hence it is submitted that Rule 57-I which is a subordinate legislation should be read in conformity with the parent provision in the statute which is contained in Section 11A of the Act. In short, it is submitted that the provisions of Section 11-A of the Act as regards the period of limitation should be read into the provisions of Rule 57-I as it stood prior to the amendment by necessary implication.

12A. Similar view is taken by the Supreme Court in the case of *State of Gujarat v. Patel Ramjibhai Danabhai* reported in (1979) 3 Supreme Court Cases 347. In that case, the legality

and validity of provisions of Section 33(6) of the Bombay Sales Tax Act, 1959 [corresponding to Section 14(6) of Bombay Sales Tax Act, 1953] came up for consideration before the Supreme Court. It was contended that no time-limit was provided in this specific provision, while for taking actions in other cases, Section 35 provided time-limit and therefore the provisions should be held to be *ultra vires*. The Supreme Court applied the maxim - GENERALIA SPECIALIBUS NON DEROSANT and negated the contention. The Supreme Court held that the provision of S. 33(6) of the Bombay Sales Tax Act, 1959 was confined to a particular class of tax evaders while Section 35 of the Bombay Sales Tax Act, 1959, was a general provision dealing with escaped assessment or under assessment. Thus whenever the legislature makes general provision and in the same sphere makes a special provision which would be applicable to specific cases, the provision relating to specific cases would be applicable to specific cases and not the provision relating to general cases”.

■

33. In the case of **Collector of Central Excise, Jaipur versus Raghuvar (India) Ltd.: 2000 (118) E.L.T. 311 (S.C.)**, the apex court held that

“14. The above conclusion of ours is itself sufficient to answer the question in favour of the Revenue and against the manufacturer, even *de hors* the applicability or otherwise of the principle of construction – *Generalia specialibus non derogant*, they do not operate on the same field or cover the same area, to be reconciled in order to avert any clash or inconsistency. That apart, even if it is to be assumed that they relate to one and the same nature of demand from the manufacturer of any amount due from him to the State, the provisions contained in Section 11A are general in nature and application and the Modvat Scheme being a specific and special beneficial scheme, with self-contained procedure, manner and method for its implementation, providing for its own remedies to undo any mischief committed by the manufacturer in abuses thereof, the provisions of the said special scheme alone will govern such a situation and there is no scope for reading the stipulations contained in a general provision like Section 11A into the provision of the rules in question which alone will govern in its entirety the enforcement of the Modvat Scheme. The question as to the relative nature of the provisions general or special has to be determined, with reference to the area and extent of their application either generally in all circumstances or specially in particular situations and not on the ground that one is a mere provision in the Act and the other is a provision in the Rule. We are not also concerned in this case with any challenge to the inconsistency of a rule with any statutory provision in the Act”.

34. The decisions above clearly state that the specific provisions when provided for specific reasons they are not violating the provisions of the Act. In the present case Rule 12AA was a specific provision introduced to bring every person who gets the articles of jewellery manufactured on job work basis shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee. The question of Rule 12AA overriding section 2(f) or Section 3 of the central excise act does not arise.

35. Coming to the question of limitation, the Commissioner has held that the fact that duty was to be paid by the manufacturers of branded jewellery was well known to the trade. Moreover, there was wide publicity by the department of Revenue to all the manufacturers of articles of jewellery that they should get registered with the department and follow all the requisite procedures as branded jewellery were liable to central excise duty. The department contended that only after searching the premises of these appellants and conducting of various investigations, recording of statements they were aware of the fact that these appellants were manufacturers of articles of branded jewellery. Since they failed to register and the facts were known to the department only after investigation there is suppression and hence proviso to Section 11A is invoked and accordingly interest and penalties has been levied.

36. The Appellants on the other hand claimed that no allegation of suppression can be levied against them since the issue of excisability on branded jewellery was in a state of confusion. It is also submitted this confusion resulted in various Board circulars and with specific reference to the Board circular issued vide F.No.354/203/2005-TRU dated 29.12.2005 where the board had directed the officers that no precipitate action to be taken to charge excise duty on jewellery. They relied on various decisions with specific reference to **T. N. Dadha Pharmaceuticals vs. CCE: (2003) (152) ELT 251 (SC)** where it was held that all the three ingredients of Section 11A (1) proviso should be present when suppression was invoked. They claimed that the impugned orders except for baldly stating that there was suppression does not bring about any positive evidence to establish that there was any omission or commission to warrant invocation of the extended period.

37. On perusal of the show cause notices and the impugned orders we find that the claim of the revenue is that there was wide publicity and all the jewellery manufacturers should have come forward and registered themselves. The revenue also claims that the fact of manufacturing of branded jewellery came to their notice only after search of the premises of the appellants and after detailed investigations conducted by them.

38. It is a fact that with effect from 1.3.2005 branded jewellery was chargeable to Central Excise Duty at the rate of 2% adv.;

wide publicity was given and various circulars were issued to educate the trade and the revenue authorities. When these amendments were introduced, it was widely publicized that all the persons engaged in sale of branded articles of jewellery are to be registered and pay the required taxes. The fact that these appellants are well known manufacturers of the articles of jewellery is not disputed. The observation of the commissioner that it came to the notice of the department only when the departmental officers started the investigation by visits to the premises of the appellants and the job workers is not acceptable. The various Board's circulars issued from time to time clearly show that there was confusion on what is considered as branded jewellery.

39. In the case of **Uniworth Textiles Ltd. Versus Commissioner of Central Excise, Raipur: 2013 (288) ELT (161)**, the apex court made the following observations on invoking the proviso of Section 11A:

“12.The conclusion that mere non-payment of duties is equivalent to collusion or wilful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso.

24. In the case of *Cosmic Dye Chemical v. Collector of Central Excise, Bombay* (1995) 6 SCC 117, this Court held that intention to evade duty must be proved for invoking the proviso to section 11A(1) for extended period of limitation. It has been further held that intent to evade duty is built into the expression “fraud and collusion” but mis-statement and suppression is qualified by the preceding word “wilful”. Therefore, it is not correct to say that there can be suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for invoking the proviso to section 11A.

25. In case of *Pushpam Pharmaceuticals Company v. C.C.E.* [1995 (78) E.L.T. 401 (S.C.)], this Court has held that the extended period of five years under the proviso to section 11A(1) is not applicable just for any omission on the part of the assessee, unless it is a deliberate attempt to escape from payment of duty. Where facts are known to both the parties, **the omission by one to do what he might have done and not that he must have done does not constitute suppression of fact.” Emphasis applied**

17. In fact, the Act contemplates a positive action which betrays a negative intention of wilful default. The same was held by *Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore* - (2003) 3 SCC 410 = 2003 (152) E.L.T. 39 (S.C.) wherein this Court held :-

“31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. *This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or willful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation.*”

‘6. ----- So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word ‘wilful’ preceding

the words 'misstatement or suppression of facts' which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty'. It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful.'

"21. This Court while interpreting Section 11-A of the Central Excise Act in *Collector of Central Excise v. H.M.M. Ltd.* (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement or suppression of fact with intent to evade the payment of duty. It has been observed :

'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'

It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :

...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause

notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso....”

40. From the 4 show cause notices and the impugned orders the allegation against the appellants is that since there was wide publicity and the appellants knew they were manufacturers of branded jewellery, should have got themselves registered and paid the duties. There is no allegation of wilful suppression or any intent to evade payment of duty either in the show cause notice nor there is any finding to that effect in the impugned orders. Moreover, the Board's clarification dated 2.3.2012 specifically admits to the fact there is confusion among the officers to the leviability of duty on branded jewellery and clarifies that only those articles of jewellery where the brand name is embossed alone will be liable for duty. This clearly shows that the liability to pay duty on branded jewellery was not free from doubt. Therefore, to state that the appellants should have come forward to pay the duty was far-fetched.

41. In case of ***Pushpam Pharmaceuticals Company v. C.C.E. [1995 (78) E.L.T. (401) (S.C.)***, the apex court has held that the extended period of five years under the proviso to section 11A(1) is not applicable just for any omission on the part

of the assessee, unless it is a deliberate attempt to escape from payment of duty. Where facts are known to both the parties, the omission by one to do what he might have done and not that he must have done does not constitute suppression of fact. The appellants therefore cannot be said to suppressed the facts as they were under the impression that they were not liable to pay duty. The Board circular dated 29.12.2005 added to the confusion :

Jewellery - Excise duty on branded jewellery - Reference to Board

Letter F. No. 354/203/2005-TRU, dated 29-12-2005
Government of India
Ministry of Finance (Department of Revenue) Central Board of
Excise & Customs, New Delhi

Subject: Excise duty on branded articles of jewellery.

I am directed to refer to Board's Circular No. B-1/1/2005-TRU, dated 4th March 2005 (2005 (181) 11.T. 17 on the above subject. The said circular clarifies the scope of levy of excise duty on branded jewellery. Board has clarified that the scope of the levy is only with respect to jewellery marketed and sold under such brand names as clearly understood in the trade Certain illustrative case were also indicated in the circular so as allay the apprehensions of the trade, and field formations were requested to suitably brief gold dealers/manufacturers etc., so that there is no inconvenience to the trade.

2. Despite the scope of duty liability on branded jewellery being clarified in detail in Board's Circular dated 4th March 2005, complaints have been received in the Board that this circular is not being given effect to, in certain Commissionerates, Certain instances have been brought to notice where some jewellers claiming to be covered by the Board's circular have been forced to pay excise duty, and jewellery has also reportedly been seized.

3. Board has taken a serious view of the matter It is surprising that Commissioners are not following instructions issued by the Board. To ensure that there is no further repetition of such incidents, and

to avoid harassment of the jewellery industry, it has been decided that when a Commissioner is in doubt and is not in a position to decide whether a particular jewellery is branded jewellery or not, or when a jeweller contests that the jewellery sold by him is not branded jewellery, the matter should be referred to the Board. Such references should be sent through the Zonal Chief Commissioner giving full details and relevant documents indicating why the particular jewellery should be treated as branded jewellery. The Chief Commissioner should forward all such references to the Board by addressing it to Member (Central Excise) along with his comments in the matter. Till such time as the matter is decided by the Board, no precipitate action should be taken to charge excise duty on such jewellery. Obviously, no reference needs to be made to the Board where the jewellers themselves agree that they are manufacturing branded jewellery as per the circular issued by the Board. Similarly, no reference needs to be made to the Board where the Commissioner holds that the jewellery in question is not branded jewellery. The contents of this letter may be circulated to all officers under your charge for strict compliance. Please acknowledge receipt of this letter.

42. In view of the above and the decisions of the apex court, we are of the opinion that proviso to section 11A cannot be invoked when there is no evidence of wilful suppression with intent to evade duty is alleged by the revenue. Therefore, we hold that the goods cleared by the appellants are branded goods and they are liable to pay duty as per Rule 12AA of the Central Excise Rules. Since no allegation of wilful suppression with intent to evade payment of duty is established from the records, the demand is restricted to normal period. In view of the fact that suppression is not established, personal penalty on Shri Subhas M Kamath, Partner of M/s. Abharan Jewellers, Udupi; Shri Vinod Hayagriv, Managing Director of M/s. C Krishnaiah Chetty & Sons

and Shri Pratap Kamath, CEO of M/s. C Krishnaiah Chetty & Sons,
are also not sustainable and consequently set aside.

43. Accordingly, the appeal Nos. E/199/2007; E/547/2008;
E/549/2008 and E/3088/2012 are allowed partially and
remanded to the original authorities for re-quantification of the
demands for the normal period along with interest. Penalty under
11AC and under Rule 25 is set aside. Appeal Nos. E/200/2007;
E/548/2008; and E/550/2008 are allowed.

*(Order pronounced in the Open Court on **14/07/2023.**)*

(DR.D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

RV