

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE
REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 20643 of 2024

(Arising out of Order-in-Original No. COC-EXCUS-000-COM-02/2023-24/CE/Commr.
dated 11.05.2023 passed by the Commissioner of Central Tax & Central Excise, Kochi.)

M/s. Muthoort Precious Metal Corporation

Muthoot Chambers, Opp Saritha Theatre complex,
Banerji Road, Erankulam, Kerala – 682018

.....Appellant

VERSUS

**Commissioner of Central Tax and Central Excise,
Cochin**

C R Building, I . S. Press Road, Ernakulam,
Kerala – 682018

.....Respondent

WITH

- (i) Central Excise Appeal No. 20670 of 2024**
- (ii) Central Excise Appeal No. 20671 of 2024**
- (iii) Central Excise Appeal No. 20672 of 2024**
- (iv) Central Excise Appeal No. 20673 of 2024**

(Arising out of Order-in-Original No. COC-EXCUS-000-COM-03,04,05&06/2023-
24/CE/Commr dated 30.05.2023 passed by the Commissioner of Central Tax & Central
Excise, Kochi.)

Appearance:

Mr. Jose Jacob, Advocate for the Appellant
Mr. M. A. Jithendra, Authorised Representative (AR) for the Revenue

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER
(TECHNICAL)

Final Order Nos. 20496-20500 / 2026

Date of Hearing: 31.10.2025
Date of Decision: 30.03.2026

Per: P. A. Augustian

The issues in the present appeals are;

- a. whether the activity carried out by the Appellant amounts to manufacture;
- b. the classification of the Gold/Silver Coins, Bars, Medal Medallions, and gift items; and
- c. whether the benefit of Notification No. 05/2006-CE dated 01.03.2006 as amended by Notification No. 12/2012-CE dated 17.03.2012 can be extended, if the activity is considered as manufacture.

2. The brief facts are the Appellant is engaged in sale of Gold /Silver Bars, Coins, Medals and Medallion and gift items which are manufactured by them on job work basis from M/s. VNM Jewels Crafts Ltd. The Appellants obtain gold / silver necessary for sale in the form of bars / bullion from government designated agency for import of gold / silver, which imports gold /silver from various countries on payment of relevant customs duties. The said gold /silver bullions are issued by the Appellants to the job worker of the Appellants who convert the bullion issued by the Appellants into bars and coins of sizes as per the specifications of the Appellants. The Bars, Coins, Medals and Medallions and gift items so obtained were sold by the Appellants classifying the same under Central Excise Tarif Heading (CETH) 7108 1200 and 7118 9000 respectively and were sold by the Appellants through their various branches located throughout the country. Alleging non-payment of excise duty, show cause notice was issued on 22.01.2013 for the period from 01.03.2011 to 16.03.2012. Adjudication authority confirmed the demand except excise duty on 'gold coins' vide Order-in-Original dated 29.04.2014. Aggrieved by said order, both Department as well as the Appellant had filed appeals before this Tribunal. During pendency of the said appeals, show cause notices for the period from 17.03.2012 to 31.07.2014 and for the period from 01.08.2014 to 31.07.2015 were issued on 10.09.2014 and 01.09.2015, respectively. In the meantime, Appeal No. E/22582/2014-DB filed by the Appellant

was remanded for denovo adjudication by this Tribunal, since applicability of exemption Notification No. 05/2006-CE dated 01.03.2006 was not considered by the Adjudication authority. Thereafter, show cause notices for the period from 01.08.2015 to 30.06.2016 and for the period from 01.07.2016 to 30.06.2017 dated 05.09.2016 and 27.07.2018, respectively were also issued. When the Appeal No. E/22585/2014-DB filed by the Department came up for hearing, it was also remanded as per Final Order No. 20192/2017 dated 02.02.2017. Thereafter Adjudication authority as per the impugned orders dated 11.05.2023 and 30.05.2023 considered all the 5(five) show cause notices (SCNs) and confirmed the demand against all the show cause notices including the demand against 'gold coins' which was dropped in the first round of adjudication and also imposed penalties under various provisions of Finance Act, 1994. Aggrieved by the said impugned orders, present appeals are filed.

2.1. Since in the above 5(five) appeals the issues involved are same they are together taken up for hearing and a decision by this Order.

Appeal No.	Period	Order-in-Original date	Goods/Items	Classification by the Department	Classification by the Appellant
E/20643 /2024	2011-2012	COC-EXCUS-000-COM-02/2023-24/CE/Commr dated 11.05.2023	Gold/Silver, bars and coins	7114	7108 1200/7118 9000
E/20670 /2024	2012-2014	COC-EXCUS-000-COM-03,04,05 & 06/2023-	Gold/Silver, bars/medals/medallions/gift items	7114	7108 1200/7118 9000
E/20671 /2024	2014-2015	24/CE/Commr. dated 30.05.2023	Gold/Silver, bars/medals/medallions/gift items	7114	7108 1200/7118 9000

E/20672 /2024	2015- 2016		Gold/Silver, coins/bars/ medals/medall ions/gift items	7114	7108 1200/ 7118 9000
E/20673 /2024	2016- 2017		Gold/Silver, coins/bars/ medals/medall ions/gift items	7114	7108 1200/ 7118 9000

3. When the appeals came up for hearing, the Learned Counsel for the Appellant submits that the entire demand is prima facie unsustainable, since the activities carried out by the Appellant is only trading and same does not amount to manufacturing. In this regard Learned Counsel draws our attention to the definition of manufacture under Section 2(f) of the Act and submits that the process undertaken by the job worker is only melting of bars and the characteristics of bars processed by melting and resolidifying in terms of purity, color, texture are the same as that of original gold /silver bullion. Thus, there is no manufacturing as alleged to demand Excise duty.

4. Learned Counsel also relied on the Judgment in the matter of **Brakes India Ltd. Vs. Supdt. of Central Excise & Others reported in [1998 (101) E.L.T. 241 (S.C.)]**, wherein the Hon'ble Supreme Court has very aptly brought out the test of character or end-use by observing as follows:

"1.....

If by a process, a change is effected in a product, which was not there previously, and which change facilitates the utility of the product for which it is meant, then the process is not a simple process, but a process incidental or ancillary to the completion of a manufactured product. It will not be safe solely to go by a test as to whether the commodity after the change takes in a new name, though in stated circumstances, it may be useful to resort

to it. This may prove to be deceptive sometimes, for it will suit the manufacturer to retain the same name to the end product also. The 'character or use' test has been given due importance by pronouncements of the Supreme Court. When adopting a particular process, if a transformation takes place, which makes the product have a character and use of its own, which it did not bear earlier, then the process would amount to manufacture under Section 2(f) irrespective of the fact whether there has been a single process or have been several processes."

5. Thus, what seems necessary is a change or transformation in the original product with a distinct character, use or identity when considered in the commercial context. The fact has been established through a number of cases by various courts all over India. Since the activity in the present case does not result in manufacture of goods, Appellants were under the bonafide belief that the activity carried out by the Appellants does not amount to manufacture. In this respect, the Appellants also placed reliance on the following case laws:-

- I. **Union of India Vs. J.G. Glass Industries Ltd. reported in 1998 (97) ELT 5**
- II. **CE Vs. M/s S. R. Tissues Pvt. Ltd. [2005 (186) E.L.T. 385 (S.C.)]**
- III. **Aman Marble Industries Pvt. Ltd. Vs. CCE [2003 157 ELT 393 SC]**
- IV. **CCE, Chennai Vs. Tarpaulin International 2010 (256) E.L.T. 481 (S.C.)**

6. As regards the classification of the bars under Central Excise Tariff Heading (CETH) 7108 and extending the benefit of Notification No. 05/2006-CE dated 01.03.2006 and the applicability of Sl. No. 21 of said Notification, Learned Counsel submits that this Tribunal had remanded the matter with a specific direction to consider whether the benefit of said Notification can be extended to the Appellant. However, while evaluating the applicability of the said Notification, the Adjudication authority denied the benefit by considering that the gold bars sold by

the Appellant did not fall within the ambit of 'primary gold' provided under explanation to Sl. No. 21. In this regard the Learned Counsel submits that gold bar is a form of primary gold imported in unwrought or semi-finished condition. As per the Gold Control Act, 1968, primary gold has been defined as "gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires. From the said definition, gold in the form of bars, slabs etc., fall under the inclusive portion of the definition of primary gold. The gold bullion imported as well as the gold bars of 10/20/50 grams sold by the Appellant are in the form of bars and consequently merits classification as primary gold at par with the above referred definition. The Appellants also placed reliance on the explanation extracted below adopted in several exemption notifications:

*"Explanation. For the purposes of the exemption, "primary gold" means gold in any unfinished or semi-finished form and includes ingots, **bars**, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires."*

7. Learned Counsel further submits that use of the word 'means' in a definition indicates that it is a hard and fast definition, and no other meaning can be assigned to the expression than is put down in the definition. Further, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition but makes the definition enumerative but not exhaustive. It is submitted that, gold bars sold by the Appellants would fall within the ambit of inclusive part of the definition of primary gold classifiable under Chapter 71 and therefore gold bars cleared during the period from 17.03.2012 to 30.06.2017 are exempted from the levy of excise duty.

8. Learned Counsel also submits that, the gold bars sold by the Appellants, being the same as that of the imported bullion, merits classification under Central Excise Tariff Heading (CETH) 7108 12 00 to the First Schedule of Central Excise Tariff Act, 1985. However as per impugned order, adjudication authority held that, the expression "articles of goldsmiths or silversmiths wares includes such articles as

ornaments, tableware, toilet-ware, smokers' articles and other articles of household, office or religious use" is only in the nature of an inclusive explanation and does not seek to exclude other articles such as gold bars which also fall under the category of articles used by goldsmith /silversmith for making jewellery. The submission of the appellant is not accepted on the ground that there is no such limitation both in the wordings of the said note and the said note specifically states that it is in the nature of the inclusive explanation and held that the gold bars and gold coins are not liable for classification under CETH 7114. Learned counsel submits that there is a fundamental flaw in the above reasoning in as much as **"articles of goldsmiths or silversmiths wares" would cover only articles manufactured by a goldsmith or silversmith and not articles used by a goldsmith or silversmith in the manufacturing process.** If such an interpretation is given, then the same would lead to absurd result. The Appellants submit that the term "wares" used in "articles of goldsmiths' or silversmiths', "wares" signifies items which are manufactured /sold by goldsmith /silversmith. The Tariff Heading 7114 deals with Articles of goldsmiths' /silversmiths' wares. In this regard, Learned Counsel draws our attention to Note 10 to Chapter 71 of the First Schedule of CETA, 1985 which provides the meaning of the phrase 'articles of goldsmiths' or silversmiths' wares' as below:

"For the purposes of heading 7114, the expression "articles of goldsmiths' or silversmiths' wares" includes such articles as ornaments, tableware, toilet-ware, smokers' articles and other articles of household, office or religious use."

9. From the above explanation, a clear picture emerges as regards the kind of articles that can be covered /classified under the said tariff head. Since gold bars do not fall in any of the category of the aforementioned specific inclusions and cannot be considered as items usable for household, office or religious purposes, it would be safe to conclude that gold bars are to be rightly classified under Tariff Heading 7108 1200, since the heading "gold (including gold plated with

platinum) unwrought or in semi-manufactured forms, or in powder form", to which they are most akin. The Learned Counsel further submits that Rule 12 AA of the Central Excise Rules, 2002 is also not applicable in Appellant's case and Appellant cannot be fastened with the liability. Rule 12AA reads as below:-

"(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 article of jewellery or other articles of precious metals falling under heading 7113 or 7114 as the case may be of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as 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"

.....

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 of the process resulting ultimately in manufacture of articles of jewellery falling under heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985, and the term "job work" shall be construed accordingly."

10. Learned Counsel submits that from the above, it is evident that only a person who engages a third party referred to as job work to undertake a whole or part of the process which ultimately results in the manufacture of articles of jewellery falling under the Tariff heading 7113 is covered by Rule 12AA. In the present case, the contention of the Revenue is that the goods in question are finished products falling under Tariff Heading 7114. Admittedly, neither Appellants nor the third

parties engaged by the Appellants undertake any activity either in whole or in part which results in the manufacture of articles of jewellery. Therefore, the third party engaged by the Appellants would not fall within the definition of the term "job worker" as defined in the explanation above and consequently Rule 12AA is not applicable to the Appellants.

11. The Learned Counsel for the Appellant further submits that even if it is held that the activities amount to manufacture and Appellant is liable to pay excise duty, Appellant is entitled for the benefit of exemption Notification No. 5/2006-CE dated 01.03.2006 which reads as below:

21.	71	Primary gold converted with the aid of power from any form of gold Explanation. For the purposes of the exemption, "primary gold" means gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires.	Nil	
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12. As regards classification and manufacturing of gold bar, the Learned Counsel also draws our attention to the decision of the Hon'ble Tribunal in the case of **M/s. Senco Gold Limited Vs. Commissioner of Central Excise, Kolkata**, wherein vide the **Final Order No.76187-76188/2024 dated 28.06.2024** it is held that:

"9.1. On going through the said entry, we find that "articles" in relation to gold shall mean anything (other than ornaments), in a finished form, made of, or manufactured from or containing, gold and includes any gold coin and broken pieces of an article of gold but does not include primary gold, that is to say, gold in any unfinished or semi-finished form including ingots, bars, blocks slabs, billets, shots, pellets, rods, sheets, foils and wires. Admittedly, the main demand in the present case against the appellant is for sale of gold bar, which is specifically excluded as

per the Explanation given in the said Entry. Therefore, we observe that the gold bars, which is primary gold, sold by the appellant, are not excisable goods and consequently, no duty is payable by the appellant

.....

11. The decision relied upon by the Ld. Authorized Representative for the Revenue in the case of Australian Foods India (P) Ltd. (supra) is not applicable to the facts of this case as, in this case, there is a specific Circular issued by the respondent vide Circular F. No. 354/38/2011-TRU dated 02.03.2012 which clarified as under: -

"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 the 25th March, 2011 stands modified to this extent."

11.1. As this clarification has been given by the respondent themselves by way of the above Circular, which is binding on the Ld. adjudicating authority, therefore, the said gold / silver coins as well as gold bars cannot be termed as 'branded goods' sold by the appellant. Therefore, the decision relied upon by the Ld. Departmental Representative in the case of Australian Foods India

(P) Ltd. (supra) is not applicable to the facts of this case in terms of the clarification given vide Circular dated 02.03.2012.

12. In view of this, we hold that no duty is payable by the appellant. Consequently, no penalty can be imposed on the appellants."

13. Learned Counsel further submits that as per impugned order, it is also held that the process of embossing the brand /trade name on the articles itself amount to manufacture considering an insertion by a Chapter Note in Chapter 71 to the said effect. In this regard, the Appellants submit that the said Chapter Note applies only to those goods classified under Chapter Heading 7113 and 7114 which in the Appellants case would not apply as the gold bars are rightly classifiable under Tariff Heading 7108. Appellants purchased gold bullion which is classified under Tariff Heading 7108 and gold bars sold by the Appellants would fall within the ambit of inclusive part of the definition of primary gold and therefore gold bars cleared during the period from 17.03.2012 to 30.06.2017 are exempted from the levy of excise duty.

14. As regards applicability of Notification, Sl. No. 21 of the Notification No. 05/2006-CE dated 01.03.2006 for the period under dispute in respect of gold bars cleared by the Appellants as directed by this Tribunal, Learned counsel submits that Adjudication authority while evaluating the eligibility of exemption as per Notification No. 05/2006-CE dated 01.03.2006, observed that gold bars sold by the Appellants do not fall within the ambit of "primary gold" provided under Explanation to Sl. No. 21. Notification No. 12/2012-CE dated 17.03.2012 was issued for providing exemption and effective rate of duty for specified goods of Chapters 1 to 98 effective from 17.03.2012. Therefore, Notification No.12/2012-CE dated 17.03.2012 is the relevant notification for determining rate of excise duty for the period under dispute. Sl. No. 188 of Notification No. 12/2012-CE dated 17.03.2012 is *pari materia* with Sl.No.21 of Notification No.5/2006-CE dated 01.03.2006. Therefore, Notification No. 05/2006-CE dated 01.03.2006 was also not applicable for the period covered under the impugned Order.

15. As regards demand against coins and its classification, as per the finding in the impugned order, Adjudication authority has held that there is no definition given for the coins. The Learned Counsel submits that said finding is unsustainable since gold coins merit classification under the head 'Coins' under the Tariff entry 7118 90 00. For ease of reference, the Tariff description under Tariff heading 7118 provided in the First Schedule to the Central Excise Tariff Act is reproduced below;

Tariff Item	Description of Goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
7118	COIN		
71181000	Coin (Other than gold coin) not being legal tender	Kg.	10%
71189000	Other	Kg.	10%

16. The description of goods under Tariff sub-heading 7118 is 'coin'. The classification at eight-digit level has two sub-headings. The first subheading relates to coins other than gold coins, which are not legal tenders. The second sub-heading covers other coins. It is evident, that coins not being legal tender would alone fall under Tariff sub-heading 7118 10 00. Such coins which are made of metals other than gold alone would fall under this heading. Chapter 71 of the Central Excise Tariff has neither defined the term 'coins' nor has explained the goods to be covered thereunder. Therefore, reliance could rightly be placed on the chapter notes and explanations provided in the Harmonized System of Nomenclature (HSN). The Learned Counsel also submits that the HSN has similar /matching Tariff descriptions and classification provided under chapter heading 7118. HSN has also provided certain notes /explanations and draws our attention to the Chapter Heading 7118.

17. As regards classification of coins, Learned Counsel further submits that the consistent stand of the department has been that they merit

classification under Chapter Heading 7118. In this regard reliance is placed on the decision of the CESTAT in the case of **N.C. Jewellers Vs. Principal Commr. of Cus., ACC, (Imports), New Delhi, 2023 (383) E.L.T. 560 (Tri. - Del.)** wherein the Hon'ble Tribunal observed as below:

"8. The gist of the findings recorded by the Principal Commissioner are as follows:

(1) The goods, being coins, are covered under CTH 7118 and entry in CTH 7114 is for residuary items;

(ii) CTI 7118 10 00 covers coin (other than gold coin not being legal tender), while CTI 7118 90 00 covers coin other than coin of CTI 7118 10 00. Thus, CTI 7118 90 00 would cover gold coin, not being legal tender;

(iii) HSN Explanatory Notes that define the scope and ambit of CTH 7118 do not explicitly exclude gold coins, not being legal tender;

(iv) The Delhi High Court in Khandwala Enterprise Pvt. Ltd. v. Union of India [2020 (371) E.L.T. 50 (Del.) [2019] 111 taxmann.com 262 / [2020] 77 GST 404], clarified that all gold coins are classifiable under CTI 7118 90 00;

(v) The contention of the appellant that the subject goods are more akin to medals or medallions struck in the form of coin cannot be accepted;"

18. Learned Counsel further submits that even though the Hon'ble Tribunal finally decided against the Revenue, the Revenue has filed an appeal against the above order of the Hon'ble Tribunal which has been admitted by Hon'ble Supreme Court in **2024 (388) E.L.T. A119 (S.C.)**. Apart from the same, the Revenue has filed other appeals as well on the same grounds that gold / silver coins are classifiable under 7118 against Final Order in the matter of **Principal Commissioner VS. S.K. Impex- 2023 (385) E.L.T. A37 (S.C.)** and **Principal Commissioner Vs. Raja & Co. Overseas Pvt. Ltd. 2023 (385) E.L.T. A36 (S.C.)**. Learned Counsel further submits that it is clear that it is the consistent

stand of the Revenue that gold /silver coins sold by the Appellants would merit classification under Tariff Heading 7118. In such a situation the stand of the Revenue in the present case alleging classification under Tariff Heading 7114 is contrary to their consistent stand. In view of the above the Revenue is estopped from taking a contrary stand in Appellant's case and consistency should be followed in classification by adopting the classification under Tariff Heading 7118 as claimed by the appellant and as claimed by Revenue in similar cases, where appeals are pending before Hon'ble Supreme Court.

19. As regards demand confirmed by invoking extended period of limitation, Learned Counsel for the Appellant submits that in the instant case, there are complex questions of law involving interpretation of the legal provisions. The Appellants were under the bonafide belief that the Appellants were not liable to pay excise duty and have no intention to evade tax. As regards gold /silver coins, it has been the consistent stand of the Revenue on pending appeals before Hon'ble Supreme Court that the same merit classification under Tariff Heading 7118 as claimed by the Appellants. Further submits that the extended period of limitation has been invoked in terms of the proviso to Section 11A (4) of the Act on the ground that the Appellants have suppressed the facts and contravened the provisions of the Act, with intent to evade payment of excise duty. In this regard, the Learned Counsel submits that Section 11A (1) of the Act provides that where any duty of excise has not been levied or paid or has been short levied or short paid, show cause notice can be issued by the department within 1(one) year from the relevant date. Section 11A (4) provides that where non-payment or short payment is by reason of fraud, collusion, wilful misstatement, suppression of facts or contravention of the provisions of the Act or rules, with intent to evade payment of duty, the Department can issue a show cause notice covering a period up to 5(five) years from the relevant date as against the normal period of limitation of one year. Thus, the demand for the period from March 2012 to July 2013 and from July 2016 to June 2018 are time barred. Learned Counsel also

submitted the details of demand barred by limitation as per the following chart:-

Half Year	Relevant Date for Filing Returns	One year From Relevant Date	Date Of SCN	Time Barred
March-2012	10.04.2012	10.04.2013	10.09.2014	YES
April-2012	10.05.2012	10.05.2013	10.09.2014	YES
May-2012	10.06.2012	10.06.2013	10.09.2014	YES
June-2012	10.07.2012	10.07.2013	10.09.2014	YES
July-2012	10.08.2012	10.08.2013	10.09.2014	YES
Augt-2012	10.09.2012	10.09.2013	10.09.2014	YES
Sept-2012	10.10.2012	10.10.2013	10.09.204	YES
Oct-2012	10.11.2012	10.11.2013	10.09.2014	YES
Nov-2012	10.12.2012	10.12.2013	10.09.2014	YES
Dec-2012	10.01.2013	10.01.2014	10.09.2014	YES
Jan-2013	10.02.2013	10.02.2014	10.09.2014	YES
Feb-2013	10.03.2013	10.03.2014	10.09.2014	YES
March-2013	10.04.2013	10.04.2014	10.09.2014	YES
April-2013	10.05.2013	10.05.2014	10.09.2014	YES
May-2013	10.06.2013	10.06.2014	10.09.2014	YES
June-2013	10.07.2013	10.07.2014	10.09.2014	YES
July-2013	10.08.2013	10.08.2014	10.09.2014	YES
July-2016	10.08.2016	10.08.2017	27.07.2018	YES

Aug-2016	10.09.2016	10.09.2017	27.07.2018	YES
Sep-2016	10.10.2016	10.10.2017	27.07.2018	YES
Oct-2016	10.11.2016	10.11.2017	27.07.2018	YES
Nov-2016	10.12.2016	10.01.2018	27.07.2018	YES
Dec-2016	10.01.2017	10.01.2018	27.07.2018	YES
Jan-2017	10.02.2017	10.02.2018	27.07.2018	YES
Feb-2017	10.03.2017	10.03.2018	27.07.2018	YES
March-2017	10.04.2017	10.04.2018	27.07.2018	YES
April-2017	10.05.2017	10.05.2018	27.07.2018	YES
May-2017	10.06.2017	10.06.2018	27.07.2018	YES
June-2018	10.07.2017	10.07.2018	27.07.2018	YES

20. As regards interest under Section 11AA of the Act and penalty under Sections 11AC of the Act and Rule 25 of the Central Excise Rules, 2002, it is confirmed on the allegation that the Appellants had suppressed the relevant facts and contravened the provisions of the Act and Rules made there under with intent to evade payment of excise duty. As submitted in ibid para, Appellant have not contravened any of the provisions of the Act or Rules. Therefore, no penalty can be imposed on the Appellants under Section 11AC of the Act or Rule 25 of the Rules. The Appellant also relied on the Judgment of the Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. Vs. The State of Orissa AIR 1970 (SC) 253**. The Learned Counsel also draws our attention to the relevant Notifications and following decisions:-

- i. **M/s Senco Gold Ltd Vs. Commissioner of Central Excise, Kolkata (2024-VIL-719-CESTAT-KOL-CE)**

- ii. **M/s N.C Jewellers Vs. Principal Commr. Of Cus, ACC (Imports), New Delhi (2023 (383) E.L.T 560 (Tri.Del), Civil Appeal admitted 2024 (388) E.L.T A119 (S.C)**
- iii. **Principal Commissioner Vs. M/s S.K Impex (2023 (385) E.L.T A37 (S.C)**
- iv. **Principal Commissioner Vs. M/s Raja & Co. Overseas Pvt Ltd (2023 (385) E.L.T A36 (SC)**
- v. **CCE Vs. M/s S.R Tissues Pvt Ltd (2005 (186) E.L.T 385 (SC)**
- vi. **M/s Aman Marble Industries Pvt Ltd Vs. CCE (2003 (157) E.L.T 393 (SC)**
- vii. **CCE, Chennai Vs. M/s Tarpaulin International (2010 (256) E.L.T 481 (SC)**
- viii. **M/s Ece Industries Limited Vs. Commissioner of Central Excise, New Delhi, 2004 (164) E.L.T. 236 (S.C.)**
- ix. **Nizam Sugar Factory Vs. Collector of Central Excise, A.P., 2006 (197) E.L.T. 465 (S.C.)**

21. The Learned Authorised Representative (AR) for the Revenue submits that all articles of gold in bar form do not fall under Tariff Heading 7108. The description of goods under sub-heading 7108 is "*gold in unwrought or semi-manufactured or in powder form*". Therefore, gold shall fall under the sub-heading 7108 only if the goods are in unwrought or semi-manufactured form or in powder form but have not reached the stage of finished articles mentioned in other sub-headings. In the instant case, the gold bars are in finished and in fully manufactured form. No further manufacturing or finishing is required on these items for the purposes for which they are commonly used. Therefore, gold bar is not classifiable under Tariff Heading 7108 1200. As regards Notification No. 5/2006-CE dated 01.03.2006, Learned AR submits that the products in context are not exempted under the Notification No. 05/2006-CE dated 01.03.2006. For claiming exemption under this notification, gold should be in any unfinished or semi-finished form. The impugned gold bars are not in semi-finished form, and no further processing is required on these items for the purposes for which they are commonly used. Therefore, the gold bar is not exempted under

Notification No. 5/2006-CE dated 01.03.2006. Learned AR further submits that Notification No.1/2011 dated 01.03.2011 (Sl.No.89) specifies the rate of duty of Articles, other than Jewellery of precious metals manufactured or sold under a brand name and falling under Tariff Heading 7114, at 1% and the Explanation No.3 to the said Sl. No. 89 as it stood on 01.03.2011 is as follows:

"articles" in relation to gold shall mean anything (other than ornaments), in a finished form, made of, or manufactured from or containing, gold and includes any gold coin and broken pieces of an article of gold but does not include primary gold, that is to say, gold in any unfinished or semi-finished form including Ingots, bars, blocks slabs, billets, shots, pellets, rods, sheets, foils and wires".

22. Therefore, during the relevant period, gold /silver bars and coins are chargeable to duty @1%. Thus gold /silver bars and coins manufactured from gold /silver bullion and embossed with a brand name / logo are rightly classifiable under chapter sub-heading 7114 11 10 (silver bars and coins) and 7114 19 10 (gold bars and coins) and the demand of Central Excise duty on Branded Gold Bar and Coin cleared during the period from 17.03.2012 to 30.06.2017 as per the impugned order is liable to be confirmed. The Learned AR further submits that the classification of coin was considered by the Tribunal in the matter of **Abans Jewels Pvt Ltd Vs. Pr. Commr. of Customs, ACC (Imports), New Delhi, - (2023) 2 Centax 283 (Tri.-Del.)** and it is held that where the Appellant had claimed classification of these imported goods as articles of gold under CTI 7114 1910 and these goods were cleared after availing exemption from payment of customs duty on the basis of Notification No.-----dated 31.12.2009. However, show cause notice were issued by the Department to reclassify the goods as falling under CTI 7118 90 90 under others since the said CTI cover all remaining coins including all legal tenders regardless of constituent material. After considering the issue in detail, the Tribunal held that:-

"64. The orders passed by the Principal Commissioner are based on an incorrect application of the GRI provisions and wrongly classify the imported goods under CTH 7118 on this basis. Even on application of GRI, the imported goods will not be classifiable under CTH 7118 90 00 in view of Explanatory Notes to HSN for Heading 71.18. Rule 1 of the GRI states that classification has to be ascertained on the basis of Section and Chapter Notes. In terms of the Chapter and Section Notes read with the HSN Explanatory Notes, coins would be classifiable under CTH 7114 and CTH 7118 cannot be assumed to be the only entry with respect to classification of 'all coins'. The imported goods were correctly classified under CTH 7114, inasmuch as non-legal tender coins cannot be classified under CTH 7118."

22.1. Thus, the classification adopted by the Department in the present case is legally sustainable.

23. Learned Authorized Representative (AR) further submits that since the inputs used in the process of conversion by the Appellant while obtaining the finished goods were in primary form of gold and silver in unwrought /semi-finished form, inputs were classifiable under 7108 2000 /7106 9100, respectively and finished goods were classifiable under Tariff sub-heading 7114 1910/ 7114 1110, respectively. Since the classification of inputs have undergone change from chapter heading 7108 to 7114, it is evident that the final product was subject to certain process itself testify that the inputs have resulted in transformation which has rendered such finished goods to be liable to excise duty.

24. In rejoinder, the Learned Counsel for the Appellant submits that the classification of coin by the Tribunal in matter of **M/s. Abans Jewels Pvt Ltd (Supra)** were not accepted by the Department and as per the SLP filed by the Department before the Hon'ble Supreme Court, the items are classifiable under Tariff item 7118 90 90.-**[2024 (388) E.L.T A 119 (SC)]**. As regards applicability of Notifications, Learned Counsel submits that impugned order is issued by the Ld. Commissioner

demanding 1% excise duty on the gold /silver bars and coins sold during the period from 17.03.2012 to 30.06.2017, relying on Sl. No.89 of the Notification No. 1/2011-CE dated 01.03.2011. Learned Counsel submits that Sl. No. 89 of the Notification No. 1/2011-CE dated 01.03.2011 was omitted vide Notification No.16/2012-CE dated 17.03.2012, therefore, Notification No. 1/2011-CE dated 01.03.2011, was not applicable during the period from 17.03.2012 to 30.06.2017. The Learned Counsel further submits that issuance of the impugned order relying on incorrect notification is liable to be set aside on this ground alone.

25. Heard both sides and perused the records.

26. We find that as regards the issue whether the activity carried out by the Appellant amounts to manufacture, the case laws relied by the Appellant are with regard to other goods and not regarding manufacturing of gold. Further in the matter of **M/s. Brakes India Ltd. (supra)**, Hon'ble Supreme Court held that when adopting a particular process, if a transformation takes place, which makes the product have a character and use of its own, which it did not bear earlier, then the process would amount to manufacture under Section 2(f) irrespective of the fact whether there has been a single process or have been several processes. Further we find that for gold special procedure for registration, valuation, maintenance of stock, filing of returns, computation of SSI exemption limit, job work, repair activity has been prescribed, and separate Rules, Articles of Jewellery (Collection of Duty) Rules, 2016 were notified for rate of duty, assessment, manner of payment including an optional scheme for payment of excise duty, stock position, job work, dead stock, removal of semi-manufactured jewellery, etc., exclusively for gold. Hence it is clear that the normal procedures prescribed for other goods do not apply to gold or articles of jewellery. Thus, activity carried out by the Appellant amounts to manufacturing.

27. As regards demand confirmed by invoking extended period of limitation, the issue is well settled as per the judgment of the Hon'ble

Supreme Court in the matter of **Continental Foundation Jt. Venture Vs. Commr. Of C. Ex., Chandigarh-I reported in 2007 (216) E.L.T. 177 (S.C.)**, wherein it is held that:-

"9. We are not really concerned with the other issues as according to us on the challenge to the extended period of limitation ground alone the appellants are bound to succeed. Section 11A of the Act postulates suppression and, therefore, involves in essence mens rea.

10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

12. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement 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.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful."

28. Similarly, in the case of **Densons Pultretaknik Vs. Commissioner of Central Excise** reported in **2003 (155) E.L.T. 211 (S.C.)** it is held that:-

"7. Next question is-whether the Tribunal was justified in invoking first proviso to sub-section (1) of Section 11A. Prima facie, it is apparent that there was no justifiable reason for invoking larger period of limitation. There is no suppression on the part of the appellant-firm in mentioning the goods manufactured by it. The appellant claimed it on the ground that the goods manufactured by it were other articles of plastic. For the insulating fittings manufactured by it, the tariff entry was correctly stated. The concerned officers of the Department, as noted above, after verification approved the said classification list. This Court has repeatedly held that for invoking extended period of limitation under the said provision duty should not have been paid, short-levied or short-paid by suppression of fact or in contravention of any provision or rules but there should be wilful suppression. [Re : M/s. Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore, C.A. No. 2693 of 2000 etc. decided on 13-1-2003]. By merely claiming it under heading 3926.90 it cannot be said that there was any wilful misstatement or suppression of fact. Hence, there was no justifiable ground for the Tribunal for invoking the first proviso to sub-section (1) of Section 11A of the Act."

29. Further, we find that special procedure for registration, valuation, maintenance of stock, filing of returns, computation of SSI exemption limit, job work, repair activity has been prescribed, and separate Rules, Articles of Jewellery (Collection of Duty) Rules, 2016 were notified for rate of duty, assessment, manner of payment including an optional scheme for payment of excise duty, stock position, job-work, dead stock, removal of semi-manufactured jewellery. etc., exclusively for the appellant industry. The dispute in the present appeal is regarding classification of the gold and Appellant has not collected the excise duty from the customers on sale of the goods. All the transactions are duly

accounted in their books of accounts. Considering the Judgment of the Hon'ble Supreme Court in the matter of **Continental Foundation Jt. Venture (supra) and Densons Pultretaknik (supra)**, in the absence of any willful misstatement or suppression of facts or contravention of any of the provisions of law with intent to evade payment of duty, moreover, the issues involved in the present case are complex questions of law involving classification and interpretation of provisions. Thus, impugned order confirming the demand by invoking extended period of limitation is unsustainable.

30. As regards classification of gold bars sold by the Appellant whether they fall under Chapter Heading 7108 or 7114, we find that to classify the goods under Chapter 71, issue to be considered as whether the bars are falling under primary gold or not. In this regard, we find that as per the explanation provided under Sl. No. 188, for the purposes of the exemption, "primary gold" means gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires. It may be noted that the definition of "primary gold" has a main part and an inclusive part. The Learned Commissioner has only considered the main part of the definition of "primary gold" and completely ignored the inclusive part of the said definition where "bars" is specifically mentioned. Even as per the Gold Control Act, 1968, primary gold has been defined as "gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires." from the said definition, gold in the form of bars, slabs etc., fall under the inclusive portion of the definition of primary gold. Further considering Note 10 to Chapter 71 of the First schedule of CETA, 1985 which provides the meaning of the phrase 'articles of goldsmiths' or silversmiths' wares, articles of goldsmiths or silversmiths wares would cover only articles manufactured by a goldsmith or silversmith and not articles used by a goldsmith or silversmith in the manufacturing process. Further the term "wares" used in "articles of goldsmiths' or silversmiths' signifies items which are manufactured / sold by goldsmith /silversmith. Thus gold bullion imported as well as the

gold bars of 10/20/50 grams sold by the Appellant are classifiable under Tariff Heading 7108. As regards rate of duty we find that Appellant is entitled to exemption under Notification No.12/2012-CE dated 17.03.2012 which reads as below:

Sl. No	Chapter/heading or Sub-heading or tariff item of the First Schedule	Description of Excisable goods	Rate	Condition No.
188	71	Primary gold converted with the aid of power from any form of gold other than gold ore, concentrate or dore bar. Explanation:- For the purposes of this entry, primary gold means gold in any unfinished or semi-finished form and includes ingots, bars , blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires.	Nil	

(emphasis supplied)

31. The Appellants also relied on the decision in the case **M/s Senco Gold Limited Vs. Commissioner of Central Excise, Kolkata (Supra)** wherein the Tribunal has categorically held that the gold bar sold by the Appellants shall fall within the above explanation and the demand as per the impugned order on the gold bars of 10/20/50 grams sold by the Appellant are unsustainable.

32. As regards gold /silver coins sold by the Appellant, we find that a separate Tariff Heading 7118 exist in the relevant Chapter, which is intended to classify coins, exclusively. However, following the decision of the Tribunal in the matter of **N.C. Jewellers and Abans Jewels Pvt Ltd, (supra)** gold /silver coins sold by the Appellant are classifiable under Tariff Heading 7114. However, even if the gold /silver coins sold by the Appellant are classifiable under Tariff Heading 7114 as held by the Adjudication Authority, as regards rate of duty, we find that as per entry no. 200 in Notification No. 12/2012-CE dated 17.03.2012

(General Exemption No. 50 which superseded Notification No. 5/2006-CE dated 01.03.2006) reads as follows:-

Sl. No	Chapter/heading or Sub-heading or tariff item of the First Schedule	Description of Excisable goods	Rate	Condition No.
200	7114	(I) Articles of goldsmiths' or silversmiths' wares of precious metal or of metal clad with precious metal, bearing a brand name; (II) Gold coins of purity 99.5% and above and silver coins of purity 99.9% and above, bearing a brand name when manufactured from gold or silver respectively on which appropriate duty of customs or excise has been paid. Explanation: For the purposes of this exemption: (1) 'brand name' means a brand or a trade name, whether registered or not, that is to say, a name or mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to the product, for the purpose of indicating or so 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; (2) an identity put by a jeweller or the job worker, commonly known as a 'housemark' shall not be considered a brand name,	1% Nil	25 -

Condition No. 25 - If no credit under Rule 3 or Rule 13 of the CENVAT Credit Rules, 2004, has been taken in respect of the inputs or input services used in the manufacture of these goods.

33. From the above notification, it is evident that Gold coins of purity 99.5% and above and silver coins of purity 99.9% and above, bearing a brand name when manufactured from gold or silver respectively on which appropriate duty of customs or excise has been paid are exempted from payment of excise duty. Though the said notification was amended by Notification No. 36/2016-CE dated 01.12.2016 for the period from 01.12.2016 to 30.06.2017 by imposing condition no. 52A,

said condition is only with respect to availing credit of excise duty, additional duty of customs on inputs or service tax. Since the appellant has not availed cenvat credit, for the period from 01.12.2016 to 30.06.2017, appellant is eligible to claim 'nil' rate of duty. In the present cases, it is an admitted fact that Gold /Silver coins are manufactured on import by paying applicable customs / excise duty and issued to job worker to convert the same into coins as per the specifications of the appellant. Thus, demand of excise duty as per the impugned order on gold / silver coins sold by the Appellant is unsustainable.

34. As regards Medals, Medallions, we find that as per HSN to Chapter Heading 7118, this heading applies to coins of any metal (including precious metals). Medals even if "struck" in the same way as coins, these usually fall in Tariff heading 7113, 7114 or 7117 or heading 8306. Considering the classification as held by the Adjudication Authority, they are classified under Chapter Heading 7114. However, considering Sl. No. 200 of the Notification 12/2012-CE dated 17.03.2012, they are classifiable under Articles of Goldsmith, and 1% duty is payable by the appellant.

35. As regards Rule 12AA of the Central Excise Rules, 2002, we find that as per the Explanation 1 of the Rule 12AA, it is applicable only to a part or the process resulting ultimately in manufacturing of articles of jewellery falling under Chapter Heading 7113 of the First Schedule of the Central Excise Tariff Act, 1985 and the term shall be construed, accordingly. Since none of the goods dealt by the Appellant are classifiable under Chapter Heading 7113, Rule 12AA of the Central Excise Rules, 2002 is not applicable.

36. In view of the above discussion, the findings in the impugned order by considering the activity /process carried out by the appellant as manufacturing is upheld. As regards classification of gold bars of 10/20/50 grams sold by the Appellant, classification as per the impugned order under Chapter Heading 7114 is set aside and they classifiable under Chapter Heading 7108. As regards demand against

gold bars of 10/20/50 grams sold by the Appellant, the appellant is entitled to exemption under Notification No.12/2012-CE dated 17.03.2012, since it is considered under the category of primary gold the demand is unsustainable. As regards classification of gold /silver coins sold by the Appellant, they are classifiable under Chapter Heading 7114. As regarding demand of duty on gold /silver coins, it is exempted from payment of excise duty as per entry no. 200 in Notification No. 12/2012-CE dated 17.03.2012. As regards Medals, medallions and gift items, we find that as held by the Adjudication Authority, they are classifiable under Chapter Heading 7114 as Articles of 'goldsmiths' or 'silversmiths'. As regards demand of duty, considering Sl. No. 200 of Notification No.12/2012-CE dated 17.03.2012, they are classifiable under Articles of 'goldsmiths' or 'silversmiths', and 1% duty is payable by the appellant. As regards demand as per the impugned order by invoking the extended period of limitation and penalty imposed by the Adjudication Authority, we find they are unsustainable.

37. In view of the above discussion, appeals are allowed by setting aside the demand against gold /silver bars of 10 /20 /50 grams and gold /silver coins sold by the Appellant. As regards demand of excise duty on medals, medallions and gift items sold by the appellant, 1% duty is payable by the appellant for the normal period and to assess the excise duty liability on the gold /silver medals, medallions and gift items sold by the appellant, the matter is remanded to Adjudication Authority.

38. Accordingly, the appeals are partially allowed in the above terms.

(Order pronounced in Open Court on 30.03.2026)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasi.....