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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/613 /2006 - CU[DB] Date 17/06/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S V K INTERNATIONAL
451/52, THAKUR PACHEWAR STREET, JOHRI
BAZAAR, JAIPUR

M/S V K INTERNATIONAL Appellant
Vs
THE COMMISSIONER (APPEALS), JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/228 2009 CU[DB]** dated 12.06.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   THE COMMISSIONER (APPEALS), JAIPUR
   DEPUTY COMMISSIONER, CUSTOMS AIR CARGO COMPLEX, SANGANER, JAIPUR, RAJASTHAN
2. Adv. / Consult
   MR.JITENDER SINGH
   F-21, GEETANJALI ENCLAVE,N DELHI
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

Customs Appeal No. 613 of 2006

DATE OF HEARING : 14/5/09.

M/s V.K. International — Appellant

Versus

CC, Jaipur — Respondent

Appearance

Shri Jitendra Singh, Advocate – for the appellant.

Shri Fateh Singh, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

Final Order No. C/228/09 Dated : ____________

ORDER

Per. D.N. Panda :-

Learned Counsel Shri Jitendra Singh submits that the goods imported – "gold mountings for making studded jewellery", are fully covered by paragraph 3 of Circular No. 12/2006-CUS dated 29/03/06 clarifying that "findings and mountings of gold/silver" are covered by S. No. 2 & 3 of the table annexed to exemption Notification No. 62/04-CUS dated 12/5/04. He mentioned that though the Board, earlier also vide Circular No. 40/2004-CUS dated 4/6/04 had clarified that the words "gold in any form" or "silver on any form in Notification No.

62/04-CUS will cover all items of gold and silver in Chapter 71, except gold/silver jewellery or foreign currency of coins of gold/silver, and that it would cover findings and mountings of gold/silver, Circular No. 528/18/04-CUS-TU dated 2/8/05 had been issued, as clarified in subsequent Circular dated 29/3/06, only to alert the field formations to prevent misuse of Notification No. 62/04-CUS by claiming concessional import duty on import of complete gold/silver jewellery in the guise of mountings and findings and that to remove confusion and difficulties, the Board in this Circular, has clarified that the findings and mountings of gold/silver are covered by the exemption Notification No. 62/04-CUS. He submits that the learned Commissioner (Appeals) without considering the Circulars aforesaid, passed the order for which the appellant is aggrieved. He prays that the matter may be sent back.

2. Learned DR while reiterating the CCE (Appeals)'s findings, agrees that there was no consideration of the matter in terms of the Board Circular. He also agreed that the department does not propose to do any injustice to the appellants.

3. Heard both sides.

4. The dispute in this case is as to whether – "18 caret gold mountings" imported by the Appellant are eligible for concessional rate of duty under exemption Notification No. 62/04-CUS dated 12/5/04. Item No. 2 of the table annexed to this notification covers – "gold in any form (other than those specified against S. No. 1 in this column), including liquid gold and tola bar". S. No. 1 of the table covers – "gold bar, other than, tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; and old coins". S.

No. 3 of the table covers – "silver in any form". Explanation to this notification clarifies that for the purpose of this notification, the, expression – 'gold in any form' or 'silver in any form' shall include medallion and coins, but shall not include jewellery made of gold or silver, as the case may be, and foreign currency coins. According to Department, the "18 caret gold mountings' imported in this case are nothing instudded jewellery and hence hit by the exclusion clause of the Explanation and it is this stand of the Department which have been accepted by the CCE (Appeals).

5. The grievance of the Appellant, however, is that the CCE (Appeals)'s order is contrary to the Board's Circular No. 40/04-CUS dated 4/6/04 wherein it was clarified that – findings and mountings of gold, so long as they are classified under Chapter 71, would be covered by the expression – 'gold in any form' in the Notification and Circular No. 13/2006-CUS dated 29/3/06 clarifying that mountings of gold and silver are covered under the scope of Sl. No. 2 and 3 respectively of the Notification No. 62/04-CUS and concessional rate of duty is applicable to these items. However we find that in between the Circular dated 4/6/04 and 29/3/06, another Circular No. 528/18/04-CUS (TU) dated 2/8/05 was issued wherein the Board clarified that -

(a) Board's circular No. 40/04-CUS dated 4/6/04 is only in nature of clarification to Notification 62/04-CUS dated 12/5/04 and any circular issued by Board under Section 151A of Customs Act, 1962 can not extend the scope of a Notification and hence where a Notification excludes benefit of concessional rate on any item, the same benefit cannot be extended on the basis of a circular ;

(b) Perusal of subject notification and circular shows that the benefit of concessional rate is available only on specified goods other than gold and silver jewellery and foreign currency coins and intention behind Circular No. 40/04-CUS was to clarify that specified items of gold/silver, other than jewellery and foreign currency coins were eligible for the benefit ; and

(c) While findings are small parts of jewellery, used for making complete jewellery item, mountings, are the structures intended to support mounting of pieces of jewellery or studdings and therefore an item of jewellery, complete in all respects except for setting of gems/stones should be treated as jewellery and hence not eligible for exemption.

5.1 The Circular dated 29/3/06, while clarifying that findings and mountings of gold and silver are eligible for exemption under Notification 62/04-CUS also states that the instructions vide F. No. 528/18/04-CUS-TU dated 2/8/05 had been issued only to alert the field formations to prevent the misuse of Notification No. 62/04-CUS in respect of import of complete gold/silver jewellery under the guise of mountings and findings.

6. We fully agree with the view expressed in the Board's circular dated 2/8/05 that a circular issued by the Board for clarifying the provisions of an exemption notification, cannot expand the scope of the notification and when the Notification 62/04-CUS dated 12/5/04 specifically excludes 'jewellery of gold', a circular cannot extend the scope of the exemption notification as to cover the gold jewellery. As per Hon'ble Supreme Court's judgment in the case of **CCE, Bolpur vs. Ratan Melting & Wire Industries** reported in **2008 (231) E.L.T. 22 (S.C.)**, Circulars of the Board are binding only when the same are in accordance with the law. Therefore the items of gold which have acquired the character of jewellery would not be covered by the

exemption – only the mountings which do not have the character of jewellery would be eligible for exemption. But this aspect has to be decided by the lower Appellate Authority.

7. Since the Commissioner (Appeals) in the impugned order in appeal has not considered the Board's circular, the matter is remanded to the Commissioner (Appeals) for de-novo decision of this appeal after hearing the Appellant afresh and taking into consideration the Board's circular cited by the Appellants and also our observations in para 6 (six) above.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK