IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75238 of 2014

(Arising out of Order-in-Original No. 16/Commnr./Kol-I/C.Ex./2013 dated 18.11.2013 passed by the Commissioner of Central Excise, Kolkata-I Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Senco Gold Limited **: Appellant**
7 & 8, CIT Road,
Kolkata – 700 014

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-I Commissionerate,
180, Shantipally, Rajdanga Main Road, Kolkata – 700 107

AND

Excise Appeal No. 75660 of 2014

(Arising out of Order-in-Original No. 16/Commnr./Kol-I/C.Ex./2013 dated 18.11.2013 passed by the Commissioner of Central Excise, Kolkata-I Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

Shri Suvankar Sen, Executive Director, **: Appellant**
M/s. Senco Gold Limited
7 & 8, CIT Road,
Kolkata – 700 014

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-I Commissionerate,
180, Shantipally, Rajdanga Main Road, Kolkata – 700 107

APPEARANCE:

Shri Rajarshi Dasgupta, Chartered Accountant for the Appellant(s)

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76187-76188 / 2024

DATE OF HEARING: 24.06.2024

DATE OF DECISION: 28.06.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the impugned order wherein demand of Central Excise Duty has been confirmed against the main appellant viz. M/s. Senco Gold Limited, 7 & 8, CIT Road, Kolkata – 700 014, along with interest; penalties on both the appellants have also been imposed by way of the impugned order.

2. The facts of the case are that during the impugned period i.e., from March 2011 to March 2013, the appellant was engaged in the production of jewellery classifiable under Chapter Sub-Heading No. 3113 of the First Schedule to the Central Excise Tariff Act (CETA), 1985 and subsequent sale of the same through their retail outlets located all over India. The appellant is also engaged in sale of 'gold bars' classifiable under Chapter Heading 71 of the CETA, 'gold coins' classifiable under Chapter Sub-Heading 71141910 of the CETA and 'silver coins' classifiable under Chapter Sub-Heading 71141110 of the CETA. The said gold bars were procured by the appellant from the Bank of Nova Scotia which bear a purity of 0.995 fineness [24 carat(KT) unbranded] and the same is sold by the appellant after cutting into various sizes as per the requirement of the customers.

2.1. Further, such gold bars bearing purity of 0.995 fineness [24 carat(KT) unbranded] constitute 'primary gold' in terms of the Gold (Control) Act, 1968, as amended from time to time. As primary gold does not attract liability to excise duty, the appellant did not pay any excise duty thereon.

2.2. Further, the appellant was also under the *bona fide* impression that since no logo, trademark or brand name was affixed/embossed on the face of the gold bars, gold coins and silver coins, they were not liable to pay duty. Accordingly, no excise duty was paid.

3. An investigation was conducted by the Anti-Evasion Unit of the Kolkata-I Commissionerate wherein documents were asked from the appellant and on the basis of documents and information gathered, a Show Cause Notice was issued to the appellant on 04.06.2013 demanding Central Excise Duty from the appellant on the sale of gold bars and gold/silver coins, alleging that the appellant is liable to pay duty in terms of Notification No. 01/2011-C.E. dated 01.03.2011 (Sl. No. 89) as the same are manufactured or sold under a brand name i.e., "SENCO GOLD".

4. The matter was adjudicated and vide the impugned order, the demand of duty was confirmed against the appellant, holding that the goods are sold by the appellant under the brand name of "SENCO GOLD" and therefore, they are liable to pay duty on the said goods. Penalty was also imposed on both the appellants.

5. Aggrieved from the said order, the appellants are before us.

6. The Ld. Counsel appearing on behalf of the appellants drew our attention to Sl. No. 89 of Notification No. 01/2011-C.E. dated 01.03.2011 and also brought to our notice photographs of the said gold bars and gold/silver coins cleared by them. It is his submission that as there is no logo, trademark or brand name affixed on the above said items,

therefore, they are not branded goods and accordingly, the appellant is not liable to pay duty in terms of Notification No. 01/2011-CE. dated 01.03.2011.

7. On the other hand, the Ld. Authorized Representative appearing for the Revenue drew our attention to the decision of the Hon'ble Supreme Court in the case of *Commissioner of C.Ex., Chennai-II v. Australian Foods India (P) Ltd. [2013 (287) E.L.T. 385 (S.C.)]* to say that the exclusive branded outlet from which the goods are sold would be the crucial factor in determining the question as to whether the appellant is selling branded goods or not.

8. Heard the parties and considered their submissions.

9. For better appreciation of the facts, the relevant portion of Notification No. 01/2011-C.E. dated 01.03.2011 is extracted hereinbelow: -

S. No.	**Chapter or heading or sub-heading or tariff item of the First Schedule**	**Description of the excisable goods**
(1)	(2)	(3)
. . . . .		
89	7114	Articles, other than jewellery, of— (a) gold,

		(b) silver, (c) platinum, (d) palladium, (e) rhodium, (f) iridium, (g) osmium, or (h) ruthenium, manufactured or sold under a brand name. *Explanation.* - 1. For the purpose of this exemption, " brand 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 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 'house-mark' shall not be considered as brand name. 3. "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.

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.

10. With regard to gold coins and silver coins, we find that there is no logo, trademark or brand name affixed/embossed on these articles. For better appreciation, the photographs of the articles as sold by the appellant are reproduced below: -

(72)

ANNEXURE – B.

(73)

10.1. On going through the pictures hereinabove, we find that there is no mark indicating brand name on the gold / silver coins and therefore, it cannot be considered that these are branded goods. In these circumstances, on these gold / silver coins, the appellant is not liable to pay duty in terms of Sl. No. 89 of Notification No. 01/2011-C.E. dated 01.03.2011.

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. Accordingly, we set aside the impugned order and allow the appeals filed by the appellants.

(Order pronounced in the open court on **28.06.2024**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd