CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 86997 of 2016
C/Cross/91146 of 2016

(Arising out of Order-in-Original No. 02/KVSS(02)ADG(ADJ)/DRI, MUMBAI/2016-17 dated 06.05.2016 passed by the Additional Director General (Adjudication), DRI, Mumbai)

Additional Director General (Adjudication) **Appellant**
Directorate of Revenue Intelligence,
2nd Floor, Old Building, New Custom House,
Ballard Estate, Mumbai 400 001.

Vs.

Johnson Matthey India Pvt. Ltd. **Respondent**
103, Asshoka Estate,
24, Barakhamba Road,
New Delhi 110 001.

Appearance:

Shri Ashwini Kumar, Additional Commissioner, Authorised Representative for the Appellant
Shri V. Sridharan, Sr. Advocate with Shri Akhilesh Kangsia, Advocate, for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 30.03.2023
Date of Decision: 30.03.2023

FINAL ORDER NO. 85733/2023

PER: SANJIV SRIVASTAVA

This appeal filed by revenue is directed against order in original No 02/KVSS(02)ADG(ADJ)/DRI, MUMBAI/2016-17 dated 06.05.2016 passed by the Additional Director General (Adjudication), DRI, Mumbai. By the impugned order following has been held.

"5. FINDINGS OF ADJUDICATION:

I have carefully gone through the records of the case, allegations adduced in the Show Cause Notice and the replies submitted by the noticee and have also heard the noticee's representative in person. I find that the main issue to be decided here is the eligibility of exemption from payment of CVD under Notification No 05/2006 -Central Excise dated 01.03.2006 (Sr. No. 25) and

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Notification No. 12/2012 -Central Excise dated 17.03.2012 (Sr. No. 193), for goods declared as Platinum Sponge by the noticee.

5.1 ELIGIBILITY OF EXEMPTION FROM PAYMENT OF CVD: The main issue to be examined here is as to whether the noticee is entitled for the exemption from payment of Countervailing Duty (CVD) on the impugned goods. imported by them by declaring them as 'Platinum Sponge, and classifying them. under Heading 7110 11 10/7110 1120. In order to come to any conclusion let us examine the allegations adduced in the SCN and the reply submitted by the noticee in the light of various legal provisions and related case laws on the issue.

5.1.1 It is alleged in the Show Cause Notice that the noticee M/s Johnson Matthey India Pvt. Ltd. imported Platinum powder falling under Chapter 71 of the First Schedule to the Central Excise Tariff Act, 1985 and availed exemption under Notification No 05/2006 - Central Excise dated 01.03.2006 (Sr. No. 25) and Notification No. 12/2012-Central Excise dated 17.03.2012 (Sr. No. 193). However, as alleged in the SCN these were not specified goods in their primary forms, that was to say, the goods were not in any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils & wires and were wrongly classified under a different Central Excise tariff item. As alleged the noticee have declared the impugned goods as 'Platinum Sponge', fraudulently classified the goods under Central Excise tariff item 7110 11 10 and claimed benefit under Notification No 05/2006 -Central Excise dated 01.03.2006 (Sr. No. 25) and Notification No. 12/2012 -Central Excise dated 17.03.2012 (Sr. No. 193), implying that the same were in unfinished or semi-finished form. It is further alleged that Platinum Sponge imported by M/s. Johnson Matthey India Pvt. Ltd. were in powder form, which appeared to be not covered under the said exemption which was for unwrought form only. As per the SCN, the goods in powder form was a wrought form, which was different and distinct from unwrought form. From a plain reading of the text of the Notification it appeared that this exemption was applicable only to the specified metals falling under Chapter 71 which were in their primary forms that was to say, any unfinished or semi-finished form. The entry also went on to specify certain forms in an inclusive manner namely; ingots, bars, blocks, slabs,

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billets, shots, pellets; rods, sheets, foils and wires. It was pertinent to note that 'powder' was not specified in the above specific forms. As the exemption notification has to be construed in strict sense, the noticee is not entitled for exemption under the notifications.

5.1.2 The importer M/s Johnson Matthey India Pvt. Ltd. vehemently denied this allegation. Noticee submitted that Sl. No.25 of the exemption notification no.5/2006, inter alia covered "Platinum in its primary forms, that is to say any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires. It applies to the whole of Chapter 71." Noticee averred that as per the SCN, the imported goods were indeed "platinum" and fell within/ under Heading 71.10. The entire dispute raised was only whether eight digit Tariff Item 7110 11 10 unwrought form or 7110 11 20 powder form covers the platinum sponge in question. Noticee argued that for the purpose of coverage under Serial No.25 that the imported precious metal should be "in their primary forms". It was clarified in the notification itself that "that is to say any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires". Noticee submitted that evidently primary form of a precious metal would certainly cover the form in which the metal first emerges during its process of manufacture. The platinum sponge in question was produced by secondary refining process of smelting, chemical leaching, chemical separation by our overseas suppliers. In this process, in the penultimate stage, ammonium chloroplatinate salt was obtained as a precipitate. This was subjected to calcination due to which ammonium chloride gets reduced off and what remains was platinum sponge. Thus, the first form in which the pure metal emerges was in the form of sponge imported by the Noticee. Hence, platinum sponge in question was indeed a primary form of platinum. Noticee further averred that in the process adopted by JMPIc, the supplier cum manufacturer was a secondary refining process where pure platinum was obtained in a form commercially known as sponge. No mechanical working or process was undertaken to obtain the sponge.

5.1.3 Before proceeding further it is pertinent to understand the relevant Statutory provisions. As the main issue to be decided

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here is the applicability of the exemption Notification No 05/2006 -C.E. dated 01.03.2006 (Sr. No. 25) and Notification No. 12/2012 -C.E. dated 17.03.2012 (Sr. No. 193) during relevant times, the text of the Notification is reproduced herein below:

Notification No 05/2006 -C.E. dated 01.03.2006

SI. No.	*Chapter or heading or sub-heading or tariff item of the First Schedule*	*Description of excisable goods*	*Rate*	*Condition No.*
25	*71*	*Silver, platinum, palladium, rhodium, iridium, osmium and ruthenium in their primary forms, that is to say, any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires.*	*Nil*	*Nil*

Notification No. 12/2012 -C.E. dated 17.03.2012

SI. No.	*Chapter or heading or sub-heading or tariff item of the First Schedule*	*Description of excisable goods*	*Rate*	*Condition No.*
193	*71*	*Platinum, palladium, rhodium, iridium, osmium and ruthenium in their primary forms, that is to say, any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires.*	*Nil*	*Nil*

From the above two Notifications, it is clear that Platinum in primary form attracts Nil rate of CVD. Now it is to be examined as to whether the goods. imported by the noticee are 'in their primary forms' that is to say, any unfinished or semi-finished form as per the description of excisable goods given in the above notifications.

5.1.4 In order to ascertain the character of goods imported by the noticee, let us first examine how the imported goods are produced and what are their properties. As explained at Volume 19 of Kirk-Othmer's Encyclopaedia of Chemical Technology, Fourth Edition recovery and refining of platinum starts with concentration of the

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ore to obtain PGM concentrate. Then PGM Concentrate is attacked with aqua regia to dissolve gold, platinum and palladium whereas more soluble metals iridium, rhodium, ruthenium and osmium remain as a residue. The solution is then treated with ammonium chloride to produce precipitate of ammonium hexachloroplatinate (NH4)2 PtCl6. Calcination of the precipitate produces platinum sponge. Even in case of refining from secondary materials containing PGM ammonium chloroplatinate is obtained in the penultimate stage and thereafter, platinum sponge is produced as usual. Thus, platinum sponge is the first pure form of the metal, whether one started from primary ore/ concentrate or secondary sources of platinum.

5.1.5 Further, as per the affidavits of Dr. Michael David Turner Jones and Mr. Jay Hasmukh Dave, employees of JMPIC, refining process undertaken by JMPIC was from recycled/ recovered materials like spent catalysts, and other waste and scrap containing platinum/ platinum alloys. The various steps involved in the process were broadly as under:

a. Smelting: This was a pyrometallurgical process wherein the process material was melted at 1200°C for around 12 hours in large reverberatory furnaces to separate the non-metallic components. Two types of bullion feeds were produced: a silver based feed containing platinum and palladium, and an iron based feed which contained all of the six platinum group metals (for short PGM) namely ruthenium, rhodium, palladium, osmium, iridium, and platinum.

b. Chemical Leaching: The two bullion feeds then moved to the chemical leaching plant, where they underwent multiple leaching stages to further concentrate the PGMs into solution. The silver based bullion was suspended in concentrated acid to slowly leach the silver, platinum and palladium into solution and separate out any gold.

c. Chemical Separation: This was a highly complex multistage process in which the six (6) PGMs were separated into their first pure form, commonly known as a PGM sponge. (Actually, JMPIC did not refine osmium or make any product from it). This process of chemical separation involved a series of solvent extractions, evaporation, dissolution, precipitation and filtration steps to produce highly pure organometallic salts for each individual PGM.

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These salts then underwent several heats treatment steps to reduce them to the pure PGM.

Further this precipitate is calcined. Ammonium chloride comes off as affine precipitate Platinum sponge is produced.

5.1.6 As given at page 643 of Explanatory Notes to Brussel Nomenclature 1955, Volume II, the principal stages of metallurgy of these metals (Platinum and other metals of Platinum group) are:

A. *Concentration of platinum sands by washing and, if necessary, removal of the gold by amalgamation.*
B. *Treatment of the concentrated ore with aqua regia; the platinum, rhodium, palladium and some iridium are dissolved, leaving osmiridium, a complex combination of osmium, iridium and ruthenium.*
C. *Precipitation of the platinum as ammonium chloroplatinate and of the iridium in the form of ammonium chloro-iridate, by means of ammonium chloride the rhodium and palladium remaining in solution may then be isolated by other processes.*
D. *Roasting the precipitates to form platinum sponge and to transform the ammonium chloro-iridate into iridium. The platinum sponge is then sintered or melted in a refractory furnace to obtain solid platinum.*

5.1.7 Thus, from the above discussions it is clear that 'sponge' is the first form of metal obtained in chemical refining process. If platinum metal in solid form is required, platinum sponge can be melted and cast into desired shape such as ingots, bars, blocks, slabs, billets etc.

5.1.8 As there is no allegation in the SCN that the goods imported by the noticee M/s Johnson Matthey India Pvt. Ltd. is not 'platinum sponge' and the only allegation is that platinum sponge imported by JMIPL is in powder form which wrought form different and distinct from unwrought form the same should be classified under Central Excise Tariff Heading 7110 11 20. As per the SCN the goods imported by JMIPL was Platinum in powder form which is not primary form of platinum and hence the exemption under the said notifications is not available to them. As per sub-heading Notes of Chapter 71, for the purpose of heading 7110, 'the expressions "powder" and "in powder form" mean products of

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which 90% or more by weight passes through a sieve having a mesh aperture of 0.5 mm'. Thus the goods imported by the noticee are in powder form or not has to be decided in the light of this statutory definition. Though, no definition of unwrought and wrought is given in the Section or Chapter Notes of Chapter 71, in the Notes to Heading 81.01 of the HSN [Explanatory Notes Fifth Edition (2012)] the terms Unwrought metal and Wrought metal has been defined as follows:

"(B) Unwrought metal, e.g., in blocks, ingots, sintered bars and rods, or as waste and scrap.

(C) Wrought metal, e.g., rolled or drawn bars; profiles, plates and sheets, strips or wire,"

Similarly, notes under the heading 71.06 it is stated "(II) Unwrought silver in lumps, grains, ingots, cast bars, pellets etc."

5.1.8.1 Further Additional U.S. Notes to Chapter 71 of Harmonized Tariff Schedule of the United States (2012)-Supplement 1 which is based on HSN provides:

"1. For the purposes of subchapter II, unless the context otherwise requires:

(a) The term "unwrought" refers to metals, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes, briquettes, cubes, sticks, grains, sponge, pellets, slot and similar manufactured primary forms, but does not cover rolled, forged, drown or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling:

(b) The term "semimanufactured" refers to wrought metal products in the form of bars, rods, sections, plates, sheets, strips, wire, tubes, pipes and hollow bars, and to powder (other than primary metals in powder form);

(c) The term "waste and scrap"

5.1.8.2 Also 'An Encyclopedia of Metallurgy and Materials by C. R. Tottle' defines Wrought metal- "A term applied to a metal or alloy that has been subjected to some form of mechanical working. The term is mainly used to distinguish such materials from cast metals, and to indicate that they have higher tensile strength and greater ductility due to modification in microstructure, than the corresponding cast product".

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5.1.8.3 Thus it is clear that 'platinum sponge' is not wrought form of metal as alleged in the SCN. It is basically a primary form of platinum metal. Also the exemption notification exempts the specified goods falling under the whole Chapter 71 without attaching any condition and hence classification is immaterial so long as it falls within Chapter 71 and the description of goods given in the notification is satisfied

5.1.9 Now to ascertain as to whether "platinum sponge" imported by the noticee is entitled to the exemption Notification No 05/2006 -C.E. dated 01.03.2006 (Sr. No. 25) and Notification No. 12/2012 -C.E. dated 17.03.2012 (Sr. No. 193) or not the requirement is that the imported material should be platinum "in their primary forms, that is to say, any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires". As discussed above in paras 5.1.4 to 5.1.6, platinum sponge is the form in which the platinum metal first emerges during the process of manufacture and hence it is one of the primary forms of platinum. This has further been clarified by Additional U.S. Notes to Chapter 71 of Harmonized Tariff Schedule of the United States (2012)- Supplement 1, wherein it is clearly stated that sponge is a primary form of metal. In the notification the prefix 'any' preceding the phrase "unfinished or semi-finished form" would mean all unfinished or semi-finished forms and hence the notification applies to any unfinished form or any semi-finished form. It is also clarified in the Additional U.S. Notes to Chapter 71 of Harmonized Tariff Schedule of the United States (2012)- Supplement 1 that sponge is unwrought form of metal. It has further been clarified therein that wrought form is semimanufactured form and covers metal in powder form, other than primary metal in powder form which is unwrought form. Thus, whatever be the classification whether unwrought or powder, it gets covered under unfinished or semi-finished forms as required under the exemption notification. Also the usage of the term "including" in the notification preceding the terms "ingots, bars, Macks, slabs, billets, shots, pellets, rods, sheets, foils and wires" clearly indicate these terms are illustrative of unfinished or semi-finished forms and not

5.1.10 CBEC while dealing with catalysts of precious metals falling under 71-scope of exemption in notification No. 05/98-

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C.E.-Reg clarified that "the exemption from excise duty under S No 193 and 194 of Notification No. 05/98-CE shall not be denied to goods of precious metals such as catalysts, ingots, powder and sponge falling under Chapter 71 when re-made out of used or spent catalysts of such precious metals, re-conditioned or re-fabricated or recovered from old or used articles or precious metals or subjected to any other similar process". Though the context of the Circular was different but wordings of the notification being the same as the notification in question, the clarification is squarely applicable in the instant case.

5.1 11 From the above discussions, I find that the allegations adduced in denying the benefits of exemption under Notification No 05/2006 -C.E. dated 01.03.2006 (Sr. No. 25) and Notification No. 12/2012 -C.E. dated 17.03.2012 (Sr. No. 193) is not tenable and the noticee is entitled for the exemption.

5.2 LIMITATION, INTEREST AND PENALTY: Since the issue of wrong availment of exemption notification as alleged in the SCN is not sustainable on merits, I am not going to limitation aspect. As the demand itself is not sustainable, the question of charging interest and imposing penalty does not arise.

2.1 This appeal has been filed raising the following grounds:-

- The order-in-original is bereft of any examination or narration regarding platinum sponge being unfinished or semi finished from of platinum metal or not and the impugned order needs to be set aside on this count itself.
- The platinum sponge imported in the instant case is in finished form and not unfinished or semi-finished form and hence the benefit of exemption claimed could not be admissible to the respondent.
- As per the market report published and available literature any platinum group of metals cannot be used to determine the finished or unfinished nature of the goods as it is frequently converted from one form to other form.

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- The adjudicating authority has failed to substantiate with any facts that the first form of metal which comes into existence shall be treated as primary form.
- The reliance placed by the adjudicating authority on the Additional U.S. Note to Chapter 71 of Harmonized Tariff Schedule of the United States (2012)-Supplement 1 to hold that sponge is an unwrought form of metal. The said United States (2012)-Supplement 1 is not similar to that of the classification under Indian Customs Tariff after the six digit level.
- The law is well established that the notifications being in the nature of sub-legislation are to be interpreted strictly.
- Reliance is placed on the decisions in the case of Gammon India Ltd. [2011 (269) ELT 289 (SC), Mihir Textiles Ltd. [1997 (92) ELT 9 (SC), Hari Chand Shri Gopal [2010 (260) ELT 3 (SC) and Hemraj Gordhandas [1978 (2) ELT J350 (SC)].
- By applying the above principles, the benefit of exemption notification cannot be extended to the respondent.

3.1 We have heard Shri Ashwini Kumar, Additional Commissioner, Authorised Representative for the appellant Revenue and Shri V. Sridharan, Senior Advocate with Shri Akhilesh Kangsia, Advocate, for the respondent.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 To understand the issue we consider the exemptions given from 1988 onwards along with the clarifications issued by the Board from time to time:

"Vide Notification No. 228/88-CE dated 06.07.1988, exemption from Central Excise Duty was granted to articles made from recycling of precious metals, from so much of the duty of excise leviable thereon as is in excess of the value of

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precious metal added and the amount charged for reconditioning/re-processing etc.

Simultaneously, vide Notification No. 230/88-CE also dated 6.7.1988 (i.e. issued on the same day as Notification No. 228/88-CE,) the Central Government exempted "Catalyst, Powder, Sponge, Ingots of precious metals" from Central Excise Duty from so much of the duty of excise leviable thereon as is in excess of the value of precious metal added and the amount charged for reconditioning/re-processing etc.

Subsequently, in the Budget proposals for 1994-95, Notification No. 228/88 was rescinded. Also, vide Notification No. 39/1994-CE dated 01.03.1994, unconditional and complete exemption was granted to article of precious metals irrespective of their form. However, Notification 230/1988 continued to be in force.

Explaining the changes made in Budget 1994-95 following was stated by J S TRU:

"Precious metals etc. (Chapter 71). - In Chapter 71, no changes have been made in the statutory rates. The present Chapter Note 4 of Chapter 71 has been amended to align the same with the corresponding Chapter Note in the Customs Tariff. This is purely for the purpose of enabling easier classification of alloys of precious metals. The existing full exemptions from excise duty on a number of items would continue by means of a new notification. The present partial exemption to articles of precious metals re-made, re-processed, etc. from old articles has been extended unconditionally to all articles of such precious metals without any conditions. (Notification No. 39/94-C.E.). In view of the above, Notification Nos. 228/88, 53/86, 313/86 and 137/89 have been rescinded. (Notification No. 64/94-C.E)."

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<u>"NOTES EXPLAINING IMPORTANT CHANGES MADE IN EXCISE DUTY</u>

31.1 Notification No. 39/94-CE is being rescinded (Notification No. 71/95-CE refers). However, the Nil rates for certain articles of precious metals, ornaments of gold or silver, strips, wires, etc. of silver and gold, imitation jewellery and precious and semi-precious stones, etc. are being continued (Notification No. 54/ 95-CB refers)

31.2 A doubt had arisen as to whether articles in relation to precious metals (other than gold) will include their unfinished or semi-finished form (including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires). Board have vide letter no. 172/2/94-CX 4 dated the 5th July, 1994 clarified that exemption of notification no. 39/94-CE is available to all articles of precious metal including ingots etc. An Explanation is now being added to make the intention clear and to remove any doubts in the matter (Notification No. 54/95-CE refers)."

TRU's Budget Circular for the 1994-95, inter alia read as follows:

"The present partial exemption to articles of precious metals re-made, re-processed, etc. from old articles has been extended unconditionally to all articles of such precious metals without any condition.

In the budget 1995-96 Notification No. 54/95-CE dated 16.3.1995, effectively continued Notification No.30/94 dated 1.3.1994, Explanation (iv) was however added to the existing notification, clarifying the meaning of "articles" in relation to precious metals. The said explanation reads as under:

"(iv) "articles" in relation to precious metals (other than gold) shall include their primary forms, that is to say, any unfinished or semi-finished form including ingots, bars,

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blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires."

The Budget Circular for the year 1995-96 explained the changes made in 1995-96 as under.

"A doubt had arisen as to whether articles in relation to precious metals (other than gold) will include their unfinished or semi-finished form Board have vide letter No. 172/2/94-CX.4 dated 5th July, 1994 clarified that exemption of Notification No. 30/94-CE is available to all articles of precious metals including ingots etc. An explanation is now added to make the intention clear and remove any doubts in the matter [Notification No. 54/95-CE]."

Notification No.54/95-C.E dated 16.3.1995 and Notification No.230/88-CE dated 6.7.1988 continued in the subsequent years also albeit with new numbers. Sl.No.72.2 of Notification 8/96 inter alia exempted articles of platinum. Sl.No.71.3 of Notification, inter alia, exempted platinum in their primary of forms that is to say to any unfinished or semi-finished including ingots etc. Sl.No.28.14 of notification granted partial exemption, inter alia to catalysts, ingot, powder and sponge inter alia, of platinum.

SL.No.31 of Notification 4/97 dated 1.3.1997 corresponded to SI.No.28.14 of Notification 8/96. SL.No.164 of Notification 4/97 dt.1.3.1997 corresponded with Sl.No.712 of Notification 8/96 dt.23.7.96.

4.3 Sl No 194 of Notification No 05/1998-CE dated 02.06.1998 read as follows:

194	71	Silver, platinum, palladium, rhodium, iridium, osmium and ruthenium in their primary forms, that is to say, any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires	Nil

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4.4 CBEC had issued **Circular No. 431/64/98-CX dated 19/11/1998 clarifying the scope of entries in Notification No 05/1998-CE**. The text of the Circular is reproduced below:

"Subject: Catalysts of precious metals falling under Chapter 71 - scope of exemption in notification No. 05/98-C.E.

I am directed to state that representations have been received from the trade, retarding the scope of exemption available to previous, metals and articles of precious metals such as ingots, bars, crucibles, foils, dishes, wires, wire gauges etc., under SI. No. 193 or 194 of Notification No. 05/98-C.E. dated 2.6.98. lt has been represented that the benefit of exemption under SI. no. 193 or 194 of Notification No. 05/98-CE dated 2.6.98 is being denied on the ground that the above goods of precious metals when re-made, re-conditioned, re-fabricated etc., and used as catalysts, are subject to excise duty at the rate of 18% of the value of materials, if any added and the amount charged for such manufacture under SI. No. 36 of the same notification. References have also been received from some field formations in this regard.

2. The matter has been examined. While articles of precious metals falling under Chapter 71 are subject to Nil rate of duty under SI. No. 193, the precious metals in unfinished and semi-finished forms are subject to Nil rate of excise-duty under SI. No. 194 of notification No. 05/98-C.E. dated 2.6.98. The above exemption is unconditional and is applicable to the said goods irrespective of whether they are manufactured first time or re-made, reconditioned or refabricated. Accordingly, it will be incorrect to charge duty on such goods under SI. No. 36 of the same notification.

3. As per the HSN explanatory notes, catalysts in the form of wire cloth or grill, of platinum, iridium, osmium, palladium are covered under Chapter Heading 7101.90 of the central excise tariff, as ""Other articles of precious metals"". Only amalgams of precious metals and colloidal precious metals (Chapter 28) and supported catalysts (Chapter 38) are excluded from Chapter 71 as per the chapter notes. Hence catalysts and articles of precious metals falling under Chapter 71 are distiretly identified from the catalysts of Chapter 28 or 38.

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4. Accordingly, it is clarified that the exemption from excise duty under SI. No. 193 and 194 of Notification No. 05/98-C.E. shall not be denied to goods of precious metals such as catalysts, ingots, powder and sponge falling under Chapter 71 when re-made out of used or spent catalysts of such precious metals, reconditioned or re-fabricated or recovered from old or used articles of precious metals or subjected to any other similar process. In order to remove any doubts in this regard the entry at SI. No. 36 of Notification No. 05/98-C.E. has also been amended suitably vide Notification No. 34/.98-C.E. dated 10.11.98.

4.5 Same entry was continued in the subsequent exemption notifications as detailed in table below:

<table>
<tr><th>Notification No/ Date</th><th>S N</th><th>Entry from the Notification</th></tr>
<tr><td>6/2000-CE dt 01.03.2000</td><td>186</td><td rowspan="4">Silver, platinum, palladium, rhodium, iridium, osmium and ruthenium in their primary forms, that is to say, any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires</td></tr>
<tr><td>3/2001-CE dt 01.03.2001</td><td>189</td></tr>
<tr><td>6/2002-CE dt 01.03.2002</td><td>172</td></tr>
<tr><td>5/2006-CE dt 01.03.2006</td><td>25</td></tr>
<tr><td>12/2012-CE dt 17.03.2012</td><td>193</td><td>Platinum, palladium, rhodium, iridium, osmium and ruthenium in their primary forms, that is to say, any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires.</td></tr>
</table>

4.6 The same entry continued till the supersession of Notification No 12/2012 dt 17.03.2012, till 30.06.2017, at the time of introduction of GST. The above clearly explains that from 1994 onwards the notification has been issued exempting the impugned goods and the wording 'used' in the

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notification then till the notification under consideration remains the same. The Ministry itself was always of the view that exemption needs to be granted to the metal in the form it emerges during a refining process, whether from ore concentrate or recycled material, the same could not have been denied. From perusal of the entry, it is evident that exemption has been granted to all the forms which arise subsequent to the emergence of the form in which these goods are imported. In view of the above circular, the contentions raised by the Revenue which go contrary to the circular issued by the Board cannot be justified.

4.7 In case of Ratan Wire and Melting [2005 (3) SCC 57], a five judges bench of Hon'ble Supreme Court has stated the law in respect of the clarifications and circulars issued by the Board stating as follows:

"5. Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on the revenue authorities and even if it runs counter to the decision of this Court, the revenue authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on revenue authorities. It was submitted that once the Board issues a circular, the revenue authorities cannot take advantage of a decision of the Supreme Court. The consequences of issuing a circular are that the authorities cannot act contrary to the circular. Once the circular is brought to the notice of the Court, the challenge by the revenue should be turned out and the revenue cannot lodge an appeal taking the ground which is contrary to the circular.

6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory

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provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

7. As noted in the order of reference the correct position vis-`-vis the observations in para 11 of Dhiren Chemical's case (supra) has been stated in Kalyani's case (supra). If the submissions of learned counsel for the assessee are accepted, it would mean that there is no scope for filing an appeal. In that case, there is no question of a decision of this Court on the point being rendered. Obviously, the assessee will not file an appeal questioning the view expressed vis-`-vis the circular. It has to be the revenue authority who has to question that. To lay content with the circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against very concept of majesty of law declared by this Court and the binding effect in terms of Article 141 of the Constitution."

4.8 Nothing has been brought forth in the appeal or during the arguments to show that there was any subsequent change in the wording of the Notification, or a pronouncement of Hon'ble Supreme Court or a Hon'ble High Court has come which goes contrary to the above clarification.

4.9 In absence, we do not find any merits in this appeal.

5.1 Appeal filed by revenue is dismissed. Cross objections disposed off.

(Order pronounced in the open court)

S. Srivastava

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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