CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 86318 of 2016

(Arising out of Order-in-Original CAO No. Pr.CC-DS/16/2015-16 Adj (I) ACC dated 02.03.2016 passed by Principal Commissioner of Customs (Import), Air Cargo Complex (Import) Commissionerate, Mumbai Customs Zone-III, Sahar, Andheri (East), Mumbai.)

Hindustan Platinum Private Limited **.....Appellants**
C-122, TTC Industrial Area
Pawane, Navi Mumbai – 400703.

VERSUS

Principal Commissioner of Customs **.....Respondent**
Air Cargo Complex (Import) Commissionerate
Mumbai Customs Zone-III
Sahar, Andheri (East)
Mumbai - 400 099.

APPEARANCE:

Shri T. Vishwanathan a/w Shri Akhilesh Kangsia, Advocates for the Appellants
Shri D.S. Mann, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87591/2023

Date of Hearing: 20.12.2023
Date of Decision: 20.12.2023

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Hindustan Platinum Private Limited, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Original CAO No. Pr.CC-DS/16/2015-16 Adj (I) ACC dated 02.03.2016 (herein after, referred to as 'the impugned order') passed by Principal Commissioner of Customs (Import), Air Cargo Complex (Import) Commissionerate, Mumbai Customs Zone-III, Sahar, Andheri (East), Mumbai.

2.1 The facts of the case, leading to this appeal, are summarised herein below:

2.2 The appellants herein, are *interalia,* engaged in the manufacture of electrical contacts, precious metal chemicals and catalysts, precious metal gauzes, platinum laboratory apparatus, precious metal spinnerets, precious metal bushings and other precious metal products falling under Chapter 71 of the Central Excise Tariff, and for this purpose import "platinum sponge". The appellants have classified the imported goods described as 'Platinum Metal or Platinum Sponge' under Customs Tariff Item (CTI) 7110 11 10 as platinum in 'unwrought form' and claimed exemption from payment of whole of additional duty of customs (CVD) under Sl. No.25 of Notification No. 05/06-C.E. dated 01.03.2006 / Sr. No.193 of Notification No. 12/2012-C.E., dated 17.03.2012. However, the department had objected to such classification of imported goods and availment of exemption, by treating such goods as classifiable under CTI 7110 11 20 as platinum in "powder form" and thus contending that the imported goods are not eligible for the above exemption benefit. The dispute relates to imports made during the period from 15.10.2009 to 10.06.2014.

2.3 The appellants have contended that the imported platinum sponge is obtained by refining/recycling/recovering materials like spent catalysts, and other waste and scrap containing platinum/platinum alloys, and not from its ores. They stated that this process is described as 'Secondary Refining' / or 'Chemical Refining'. The process involves various steps broadly – smelting, chemical leaching and chemical separation. Platinum obtained from the chemical refining/secondary refining process is always in the form of "sponge". Such sponge is the first form of the platinum metal obtained in the chemical refining processes. It is called 'sponge' due to open porous morphology/structure. Though the sponge looks like powder, it is not a powder as defined in metallurgy or Sub-Heading Note 1 to Chapter 71 of the Customs Tariff. In this regard, they relied upon the Explanatory Notes to Heading 71.09 in the Brussels Tariff Nomenclature, 1955, (Volume II), 2nd Edition (1958) which deals with the principal stages of metallurgy of platinum and other metals of platinum group and clearly provides that sponge is the first form of metal obtained in the chemical refining process. Further, they stated that Additional Notes to Chapter 71 of the Harmonised Tariff Schedule of the Explanatory Notes, United States (2012) – Supplement 1 specifically refers to 'sponge' as 'unwrought' form of metal.

2.4 Learned Advocate for the appellants submitted that there is no definition of *'unwrought form'* under the Customs Tariff. As per Dictionary definition, 'wrought' is resultant metal obtained by subjecting it to mechanical process like hammering and / or beating. Thus, in essence it is a mechanical process carried out on the metal to give the product the desired shape. Therefore, any precious metal on which no mechanical process (hammering, beating, etc., to give a specific shape) is carried out would be termed as 'unwrought' as opposed to 'wrought'. Platinum sponge in question is obtained by chemical refining in the present case. It is not obtained by subjecting the metal to mechanical processes. Hence, they claimed that it is classifiable under CTI 7110 11 10.

2.5 They further submitted that CTI 7110 11 20 covers platinum in powder form; Sub-Heading Note 1 to Chapter 71 defines 'powder'. In the present case, the department had not submitted any evidence to suggest that the imported platinum "sponge" satisfies the above definition. Further, no samples were drawn at any point of time or analysis of any consignment in question was done at the time of imports. Therefore, they stated that the customs department had failed to discharge the burden while changing the classification of the imported goods under CTI 7110 11 20. [H.P.L Chemicals Vs. CCE –2006 (197) ELT 324 (SC).]

2.6 Learned Advocate also submitted that "platinum sponge" is the first form of platinum which emerges during the refining process. If that is so, then the suggestion that this first form of metal ('sponge') is not unfinished or semi-finished form of metal, whereas subsequent forms of metal obtained viz., ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wire, etc., are considered to be "unfinished or semi-finished" from of metal, is totally incorrect and does not stand to logic. In fact, when sponge is considered to be primary form of metal, it necessarily implies that it is unfinished or semi-finished form of metal.

2.7 They further stated that Notifications No. 05/06-C.E. dated 01.03.2006 and No. 12/2012-C.E., dated 17.03.2012 had granted exemption to '*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'*. The various forms of metal viz. "ingots, bars, blocks, slabs, billets etc." mentioned in the exemption notification, are subsequently obtained by melting and casting of the platinum sponge into the respective shape(s). Further, they stated that rods, sheets, foils and wires, etc., are obtained by hammering / drawing / rolling, as the case may be, of the cast shapes like ingots, bars, blocks, slabs, billets. If the above forms are themselves unfinished or semi-finished forms, surely the sponge form which is obtained has to be considered as the primary form / unfinished or semi-finished form.

2.9 In terms of the wordings used in the Notifications in question, they claimed that in the phrase "Platinum in its primary form that is to say, any unfinished or semi-finished form…", the prefix 'any' preceding the phrase "any unfinished or semi-finished form" is even more significant, as it includes 'all' or 'every' form of unfinished or semi-finished forms of platinum. Thus, they claimed that the notification applies to any unfinished form or any semi-finished form. Further, the words "ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires" are preceded by the prefix "including". Therefore, they contended that these are illustrative examples of unfinished or semi-finished form. These forms illustrated in the Notification are therefore not exhaustive of unfinished or semi-finished forms. Thus, when sponge is considered to be primary form of metal, then by necessary implication it is considered to be unfinished or semi-finished form of metal, and hence, they claimed that the imported goods are correctly eligible for the exemption benefit.

2.10 In support of their submissions, they claimed that the issue stands concluded by CBEC's Circular dated 19.11.1998 in their favour as it was clarified that platinum sponge will be exempt under Sl. No. 194 of predecessor Notification No. 5/98-CE dated 2.6.1998 (which is identical to Sl. No. 25 of Notification No.5/2006 and Sl. No. 193 of Notification No. 12/2012).

2.11 Further, learned Advocate stated that this very issue for the other importer arising out of the common investigation has been recently decided by this Tribunal in the case of *Additional Director General (Adjudication) Vs. Johnson Matthey India – 2023 (5) TMI 1133* in favour of the assessee and held that exemption from CVD is correctly available to the imported platinum sponge. In this regard, they also stated that the Show Cause Notice dated 25.07.14 issued to the appellants in the present case is verbatim similar to the SCN dated 29.04.2015 issued to the other importer (Johnson Matthey) in the above case. Hence, on the basis of the order passed by he Tribunal in the above case and considering that the basis for issue of both the SCNs being identical i.e., 'imported platinum sponge' is platinum in powder form, the adjudged demands in this case liable to be set aside. Further, they stated that department has not challenged the above decision in Johnson Matthey India's case and therefore, the same has attained finality and the present case cannot be decided in a different manner.

3. On the other hand, learned Authorised Representative for Revenue reiterated the findings of the adjudicating authority in the impugned order, and submitted that during the investigation itself, various officials of the appellants had clearly stated that the imported goods are in 'sponge' form and hence the imported goods are not eligible for subject exemption from payment of CVD. Therefore, he prayed that the appeals preferred by the appellants are liable to be set aside.

4. Heard both sides and perused the records of the case.

5. The short issue for consideration before the Tribunal in this case is,-

> (i) whether the imported 'Platinum Metal or Platinum Sponge' is classifiable under Customs Tariff Item (CTI) 7110 11 10 as platinum in 'unwrought form' and is eligible for exemption from payment of whole of additional duty of customs (CVD) under Sl. No.25 of Notification No.05/06-C.E. dated 01.03.2006 / Sr. No.193 of Notification No. 12/2012-C.E., dated 17.03.2012, or
>
> (ii) whether such imported goods are classifiable under CTI 7110 11 20 as platinum in "powder form" and thus are not eligible for the above exemption benefit.

6. In order to address the above issue of classification of imported goods, and the issue of eligibility to CVD exemption vide Sl. No.25 of Notification No.05/06-C.E. dated 01.03.2006 / Sr. No.193 of Notification No. 12/2012-C.E., dated 17.03.2012, we would like to refer the relevant legal provisions contained in Sections 12, 25 of the Customs Act, 1962; Section 2 of the Customs Tariff Act, 1975 and notifications issued thereunder for consideration of proper duty applicable on the subject goods under dispute.

Customs Act, 1962

*"**Section 12. Dutiable goods.** -*

> *(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.*
>
> *….*
>
> ***Power to grant exemption from duty.***

***25.** (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon….”*

*“**Section 2. Duties specified in the Schedules to be levied.** -*

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

Section 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges.

(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article :

Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Explanation. — In this sub-section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

xxx xxx xxx xxx

THE FIRST SCHEDULE – IMPORT TARIFF
(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF/THIS SCHEDULE

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Sectionor Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

xxx xxx xxx xxx

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:
(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

xxx xxx xxx xxx

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES (GEN) TO IMPORT TARIFF

1. *Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--". …"*

7. As the dispute in the present case mainly lie with the eligibility of the exemption to additional duty of customs (CVD) of the imported goods, we would also like to refer to the relevant Customs/Central Excise Tariff heading, sub-headings, tariff items and the notifications issued over a period of time, in order to identify the scope of goods covered under such

classification in chapter sub-heading 7110 11, and specifically CTI 71101110 & CTI 7110 1120 and the notification issued for providing exemption from CVD. The First Schedule of the Customs Tariff and the First Schedule of the Central Excise, which is aligned with the Customs Tariff, in respect of Chapter heading 7110and the relevant NotificationsNo.05/06-C.E. dated 01.03.2006 (Sl. No.25) and No. 12/2012-C.E., dated 17.03.2012(Sr. No.193) are extracted and given as below:

Tariff Item	**Description of goods**
(1)	(2)
7110	PLATINUM, UNWROUGHT OR IN SEMI-MANUFACTURED FORM, OR IN POWDER FORM
7110 11	- *Platinum:* -- Unwrought or in powder form:
7110 11 10	---Unwrought form
7110 11 20	--- In powder form
7110 19 00	-- Other
7110 21 7110 21 00	- *Palladium:* --Unwroughtor in powder form
7110 29 00	--Other

and

"Notification No. 5/2006-C. E. dated 01.03.2006

Exemption and effective rate of duty for specified goods of Chapters 50 to 83

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table subject to the relevant conditions specified in the Annexure to this notification, and the Condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid.

Explanation. - For the purposes of this notification, the rates specified in column (4) of the said Table are *ad valorem* rates, unless otherwise specified.

Table

(1)	(2)	(3)	(4)	(5)
S. No.	Chapter or heading or subheading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
xx	xx	xxx	xx	xx
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	-
xx	xx	xxx	xx	xx"

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

Exemption and effective rates of duty for specified goods of Chapters 1 to 98

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 3/2005-Central Excise, dated the 24th February, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 95 (E), dated the 24th February, 2005, (ii) notification No. 3/2006-Central Excise, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 93 (E), dated the 1st March, 2006, (iii) notification No. 4/2006-Central Excise, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 94 (E) dated the 1st March, 2006, (iv) notification No. 5/2006-Central Excise, dated the 1st March, 2006 , published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i), *vide* number G.S.R. 95 (E) dated the 1st March, 2006, (v) Notification No. 6/2006-Central Excise, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 96 (E) dated the 1st March, 2006, and (vi) notification No. 10/2006-Central Excise, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 100 (E) dated the 1st March, 2006, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below read with relevant List appended hereto and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the Table aforesaid :

Provided that nothing contained in this notification shall apply to the goods specified against serial number 296 and 297 of the said Table after the 31st day of March, 2013.

Explanation 1. - For the purposes of this notification, the rates specified in column (4) of the said Table are *ad valorem* rates, unless otherwise specified.

Explanation 2. - For the purposes of this notification, "brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and a person using such name or mark with or without any indication of the identity of that person.

Table

(1)	(2)	(3)	(4)	(5)
S. No.	Chapter or heading or subheading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
xx	xx	xxx	xx	xx
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	-
xx	xx	xxx	xx	xx"

Further, sub-heading note No.1 to Chapter 71 of Customs Tariff as well as Central Excise Tariff, uniformly worded therein, is extracted and given below:

> "*SUB-HEADING NOTES:*
> *1. For the purposes of sub-headings 7106 10, 7108 11, 7110 11, 7110 21, 7110 31 and 7110 41, the expressions "powder" and "in powder form" mean products of which 90% or more by weight passes through a sieve having a mesh aperture of 0.5 mm."*

8.1 Plain reading of the above tariff items covered under the First Schedule of the Customs Tariff reveal that 'platinum' is covered under sub-heading 7110 11 and depending upon whether such platinum is in 'unwrought form' or in 'power form', it is classifiable under tariff item 7110 1110 or 7110 1120, respectively. Further, plain reading of sub-heading note 1 to Chapter 71, specifically provide that if platinum product, in whatever unfinished or semi-finished form it is presented, when such product passes through a sieve having a mesh aperture of 0.5mm., to the extent of 90% or more, then such platinum product is treated as 'platinum power' or platinum 'in powder form'. As there is no other definition or chapter note, heading or sub-heading notes, other than the above, for the legal purpose of classification of goods, in terms of Rule 1 of the General Interpretative Rules (GIR) to classification, in order to determine, whether the imported platinum product is (i) 'in power form', or (ii) 'in unwrought form', the only valid test as per the Customs and Central Excise Tariff, is to prove the permissibility of 90% or more of the platinum product as per sub-heading note 1, discussed above. On plain reading of the exemption entries under Notifications No.05/06-C.E. dated 01.03.2006 (Sl. No.25) and No. 12/2012-C.E., dated 17.03.2012 (Sr. No.193), it clearly transpires that platinum, in any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires, are eligible for exemption benefit.

8.2 With the above background of legal position on classification of goods and its eligibility to exemption benefit, and on careful perusal of the impugned order, we do not find that the authorities below including the Commissioner of Customs (Import) as adjudicating authority, have examined this basic fact, for the legal purpose of classification and eligibility to the exemption benefit. In view of the evidential facts for substantiating the case of denial of exemption benefit to the appellants and for the failure to establish the basic fact of fulfilling the requirements of sub-heading note 1 of chapter 71 as discussed above, the impugned order classifying the impugned goods as platinum in powder form and for denying the exemption benefit, is not legally sustainable.

8.3 The impugned order in denying the exemption benefit for the imports and in confirmation of the adjudged demands, have relied upon Rule 3C of GIR and the fact that 'powder form' is not the one of the forms specified in the aforesaid exemption notification. In this regard, we find that in a situation where the classification of the goods cannot be decided under rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, then rule 3 apply. Further, in respect of goods which are put up in sets for retail sale, when they cannot be classified based on rule 3(b) based on the essential character of the material or component which gives their essential character, then adoption of the heading that occurs last in numerical order, as per rule 3(c) is to be applied. In the present case, the dispute in classification is limited to two tariff items (TIs) within single sub-heading 711011, either under TI 7110 1110 or TI 7110 1120. Further, both the tariff items are specifically identifiable in the forms with which these goods are present or available, in unwrought form or in powder form. Therefore, we are of the considered opinion that the said rule 3C does not apply in the present case.

8.4 Further, exemption benefit under Notifications No.05/06-C.E. dated 01.03.2006 (Sl. No.25) and No. 12/2012-C.E., dated 17.03.2012 (Sr. No.193), has been extended, *inter alia*, to platinum product, in any unfinished or semi-finished form, including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires. Even though 'powder form' is not mentioned in the said exemption entry, either for granting or for denial of such exemption, by reading it strictly as per the phrase used therein, the scope of coverage of goods under the exemption entry has been clearly spelt out in exhaustive manner viz., "all unfished or semi-finished from" of the platinum by use of specific wordings viz., *'any unfinished or semi-finished form including…'* such forms which are specified therein. Thus, we are of the considered view that in order to deny the above exemption, what is required to be proved is that the imported platinum is not in the unfinished or semi-finished form. In other words, it is only those goods which are in finished form of platinum, which alone are kept outside the scope of the aforesaid exemption. Inasmuch as the impugned order, neither proves that the imported platinum is in finished form, nor it demonstrates that the imported platinum does not fall under the semi-finished form or unfinished form, such exemption benefits available under the aforesaid notifications cannot be denied to the appellants.

9.1 We also find that the appellants have contended that issue of eligibility of exemption to platinum in unfinished or semi-finished form, in powder or sponge form etc., have been addressed by the Central Board of Excise & Customs (CBEC) earlier by issue of clarification vide circular dated 19.11.1998. In this regard, the copy of the said CBEC circular issued on 19.11.1998 is extracted and given below:

"Circular No. 431/64/98-CX, dated 19-11-1998

F. No. 332/82/98-TRU
Government of India
Ministry of Finance
(Department of Revenue)
New Delhi

Subject : Catalysts of precious metals falling under Chapter 71 - Scope of exemption in Notification No. 5/98-C.E. - Regarding.

I am directed to state that representations have been received from the trade, regarding the scope of exemption available to precious metals and articles of precious metals such as ingots, bars, crucibles, foils, dishes, wires, wire gauges etc., under Sl. No. 193 or 194 of Notification No. 5/98-C.E., dated 2-6-1998. It has been represented that the benefit of exemption under Sl. No. 193 or 194 of Notification No. 5/98-C.E., dated 2-6-1998 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 Sl. 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 Sl. No. 193, the precious metals in unfinished and semi-finished forms are subject to Nil rate of excise duty under Sl. No.194 of Notification No. 5/98-C.E., dated 2-6-1998. The above exemption is unconditional and is applicable to the said goods irrespective of whether they are manufactured first time or re-made, re-conditioned or re-fabricated. Accordingly, it will be incorrect to charge duty on such goods under Sl. 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 distinctly identified from the catalysts of Chapter 28 or 38.

4. Accordingly, it is clarified that the exemption from excise duty under Sl. No. 193 and 194 of Notification No. 5/98-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, re-conditioned 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 Sl. No. 36 of Notification No. 5/98-C.E. has also been amended suitably vide Notification No. 34/98-C.E., dated 10-11-1998."*

9.2 The exemption entry in Sl. No. 194 which is referred to in the above circular reads as "*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*". The above entry is exactly similar to the description of the goods specified in the entries under Notifications No.05/06-C.E. dated 01.03.2006 (Sl. No.25) and No. 12/2012-C.E., dated 17.03.2012 (Sr. No.193), except that 'silver in such specified forms' has been excluded, in these serial numbers. As regards, platinum products are concerned, the scope of the entry is same. In such context, the CBEC had specifically clarified that the exemption benefit shall not be denied to goods of precious metals such as in the form of catalysts, ingots, powder and sponge falling under Chapter 71. Thus, it follows that the field formations implementing the classification of goods, assessment to duty including exemption to be extended to various goods as per notifications issued under the law, have to follow the instructions issued under Section 37B of the Central Excise Act, 1944 and/or Section 151A of the Customs Act, 1962, for the purpose of uniformity in implementation of the law. Therefore, we are of the opinion, that a different view cannot be taken from the legal position of the exemption, as clarified in the circular issued by the CBEC. Accordingly, we find that the impugned order, insofar as it had denied the exemption benefit to the impugned goods of platinum, in the present case is not legally sustainable.

10.1 In this regard, we find that the present appeal was considered for early hearing and was allowed so, vide Miscellaneous Order No. M/85620/2023 dated 05.10.2023, on the ground that the issue in dispute is covered by the Final Order No, 85733/2023 of the Tribunal in the case of *Additional Director General (Adjudication) Vs. Johnson Matthey India Pvt. Ltd.* – 2023 (5) TMI 1133, which had been investigated simultaneously, but demand notices or SCN for recovery of duty has been issued separately for different parties.

10.2 In the above case of *Johnson Matthey India Pvt. Ltd. (supra),* the Co-ordinate Bench of the Tribunal had exhaustively dealt with the issue and have held that the exemption extended to products of platinum were continued to be given and there was no subsequent change; and therefore the appeal filed by Revenue against the order of the adjudicating authority in extending the exemption benefit was dismissed. In coming to such conclusion, the Tribunal had also relied upon the judgement of the Hon'ble Supreme Court in the case of Ratan Wire and Melting - 2005 (3) SCC 57 and the CBEC circular dated 19.11.1998. The relevant paragraphs of the said order in the above referred case is extracted below:

> *"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 ofprecious 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, reprocessed, 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)."*
>
> *'NOTES EXPLAINING IMPORTANT CHANGES MADE IN EXCISE DUTY*

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,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*

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. It 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 remade, 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 semifinished 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 remade, 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 distinctly identified from the catalysts of Chapter 28 or 38.

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:

Notification No/ Date	S N	*Entry from the Notification*
6/2000-CE dt 01.03.2000	*186*	*Silver, platinum, palladium, rhodium, iridium, osmium and ruthenium in their primary forms,*
3/2001-CE dt	*189*	

01.03.2001		*that is to say, any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires*
6/2002-CE dt 01.03.2002	*172*	
5/2006-CE dt 01.03.2006	*25*	
12/2012-CE dt 17.03.2012	*193*	*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.*

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 thenotification 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 statutoryprovisions. 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-à-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."

11. In view of the foregoing discussions and analysis, we conclude that the impugned goods 'Platinum Metal or Platinum Sponge' under consideration imported by the appellants are correctly classifiable under tariff item 7110 11 10 as platinum in 'unwrought form' and are eligible for full exemption from Additional Duty of Customs (CVD) under Notifications No.05/06-C.E. dated 01.03.2006 (Sl. No.25) and No. 12/2012-C.E., dated 17.03.2012 (Sr. No.193), as amended. Therefore, we are of the considered view that the impugned order passed by the learned Principal Commissioner of Customs (Imports) is liable to be set aside, as it does not stand the scrutiny of law. Therefore, by setting aside the impugned order dated 02.03.2016, the appeal is allowed in favour of the appellants.

12. In the result, the impugned order dated 02.03.2016 is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of the Order pronounced in open Court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha