IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH, CHENNAI

Application No. E/Misc./42075/2013 (by Dept.) and Appeal No. E/326/2012 (by Assessee)

(Arising out of Order-in-Original No.17/2012 dated 27.2.2012 passed by the Commissioner of Central Excise, Chennai III)

M/s. Titan Industries Ltd. Appellant

Vs.

Commissioner of Central Excise, Chennai III Respondent

[now sought to be changed as CCE & ST, LTU, Chennai]

Appearance

Shri Arvind P. Datar, Senior Advocate and

Mrs. Radhika Chandrasekhar, Advocate for the Appellant

Shri K.P. Sridhara Raman, Special Counsel and

Shri M. Rammohan Rao, JC (AR) for the Respondent

CORAM

Hon ble Shri R. Periasami, Technical Member

Hon ble Shri P. K. Choudhary, Judicial Member

Date of Hearing: 01.09.2015, 03.09.2015

Date of Pronouncement: 15.2.2016

Final Order No. 40212/2016

Per R. Periasami

The appellant filed appeal against the impugned order dated 27.2.2012 passed by Commissioner of Central Excise, Chennai III.

2. Revenue filed miscellaneous application for change of cause title as the appellant had opted under LTU, Chennai with effect from 13.4.2013 and sought change of the respondent s name from Commissioner of Central Excise, Chennai III to Commissioner of Central Excise & Service Tax, LTU, Chennai. Accordingly, we allow the miscellaneous application and direct the Registry to amend the cause title of respondent as Commissioner of Central Excise & Service Tax, LTU, Chennai

3. The brief facts of the case are that the appellants are engaged in the manufacture of Branded jewellery falling under Chapter 7113 under brand name "Tanishq" and unbranded jwellery and registered with Central Excise and discharging duty on Branded Jewellery. Appellants were

issued two show-cause notices No.22/2009 dated 3.3.2009 and SCN No.76/2009 dt. 30.11.2009 demanding excise duty on the Branded jewellery. It was alleged in the show-cause notices that the appellant have affixed the mark Q and I on the jewellery and cleared without payment of duty. Further, it was alleged that the appellants were paying excise duty on the branded jewellery under the brandname Tanishq and paid duty @ 2% advelorem for the clearances made upto June 2006. Therea er, appellant stopped using the brand name Tanishq and started using the mark Q and I and the jewellery were cleared and sold in the market, therefore the mark Q and I represents brand name or trade name.

4. The adjudicating authority in the impugned order, after following the principles of natural justice, confirmed the demand of excise duty of Rs.49,83,39,799/- for the period September 2005 to December 2008 in respect of show-cause notice dated 3.3.2009 and Rs.14,07,73,564/- for the period January 2009 to 06.07.2009 in respect of show-cause notice dated 30.11.2009 along with appropriate interest and also imposed penalties of Rs.4,98,33,980/- and Rs.1,40,77,360/- respectively under Rule 25 of CER. Hence the present appeal.

5. The learned Senior Advocate Shri Arvind P. Datar appearing for the appellant briefly explained the background of history of levy of excise duty on branded jewellery. He submitted that the period involved in both the show-cause notices are from September 2005 to July 2009. He submits that levy was introduced for the first time on 1.3.2005. Subsequently, it was withdrawn in 2009 and was reintroduced in 2011. He submits that the appellants after introduction of levy of branded jewellery, they discharged excise duty on the jewellery having the brand name and logo of TANISHQ which was a registered brand name. Subsequently, they decided not to emboss the brand name on the jewellery from 1.7.2006 which they duly intimated to the Department. Thereafter, they started clearing unbranded jewellery and also submitted that during the period without affixing the brand name they cleared by another brand name GoldPlus . He submits that once they decided not to affix their brand name they are not liable for excise duty. Whereas in the impugned order duty has been demanded on the ground that the le ers Q and I embossed on the reverse of the jewellery have to be treated as brand name. He further submitted that the general practice in the jewellery trade that jewellery will have identification mark to indicate the name of the person who made the jewellery, name of the job worker. He submitted copies of photographs of jewellery where on the reverse of the jewellery, the le ers AM is embossed and on the other side Q is embossed. He also produced photograph of the Branded jewellery which was cleared previously under the brand name TANISHQ and the logo was embossed on the branded jewellery. He submi ed that the le ers AM only indicates the name of the job worker and the le er "Q represents TANISHQ . He also produced another photograph of the jewellery where at the end le ers AEI has been embossed and explained AE represented job worker and I represents iden fying GoldPlus category of jewellery.

6. He drew a en on of the Board s Circular dated 29.12.2005 and submi ed that the instruc on of the Board s circular has not been followed by the adjudica ng authority. As per the circular, Board has categorically directed the field formation that if the Commissioner has any doubt and is not in a position to decide whether a particular jewellery is a branded jewellery or not, or when the jeweller contests that the jewellery sold by him is not branded jewellery, in such cases, the Chief Commissioner should forward all such references to the Board by addressing to the Member, Central Excise for his comments. Till such time, the matter is decided by the Board no precipitate

action should be taken to charge excise duty on such jewellery. He submits that when such clear cut instruction was given by the Board, the Commissioner should have referred to the Board through the Chief Commissioner as they have contested and also informed the authority that they were not using the brand name TANISHQ with effect from 1.7.2006 and were clearing unbranded jewellery. He drew a en on to the Grounds of Appeal para 3 at page 8 and submits that the Board s instruction is binding on the adjudicating authority. He relied on the following decisions:-

(a) Paper Products Ltd. Vs. CCE - 1999 (112) ELT 765

(b) Union of India Vs. Arviva Industries (India) Ltd. - 2007 (209) ELT 5

(c) Padinjarakara Agencies Ltd. Vs. State of Kerala 2008 (13) VST 151

7. He also drew attention to para 36 of their Grounds of Appeal and submits that the Commissioner has not considered any of the decisions and the Circulars relied by them during the personal hearing as well as their reply to the show-cause notices. He drew attention to para 36 (a), (b), (c) and (d) of the Grounds of Appeal and submits that Commissioner in the impugned order has accepted the fact that they have stopped embossing the logo TANISHQ from 1.7.2006 which is clearly recorded para 17 of the impugned order. He drew a en on to Board s Circular dated 28.3.2005 where the Board has clearly clarified that excise duty is leviable on branded jewellery only if the brand name or trade name is indelibly affixed or embossed on the article of jewellery itself as per Chapter 71 and such affixing or embossing of brand name or trade name on the jewellery would amount to manufacture. He submits that they have stopped affixing the brand name of TANISHQ .

8. The senior counsel then drew a en on to the Board s Circular dated 4.3.2005 where the Board has categorically clarified at para 2(i) and 2(ii) where a jeweller, when it sells articles of jewellery to customers, puts a distinctive sign / mark / initials etc. on the jewellery, it is only to identify that the article of jewellery was received from a particular goldsmith. Board has clarified that it is not a branded jewellery and it will not a ract tax. in the present case, he submits that AE and AM is an iden fica on on the part of the job worker. He drew a en on to para 2(ii) of circular where an example was given clearly explaining that when a jeweller sends an article of jewellery to a customer, puts a distinct sign/mark/initials etc on the jewellery. This is again for the purpose of identification so that if the jewellery is returned to the jeweler they will recognize as their own jewellery. In this case jeweler does not sell the jewellery under a brand name and Board has clarified in such cases it is not a branded jewellery and will not attract tax. He submits that the le ers Q and I affixed on the jewellery is nothing but to iden fy the jewellery and it is done by the jeweller so as to identify the authenticity of the jewellery. In view of para 2(ii) of Board circular, he submits that use of identification mark Q and I cannot be construed as jewellery was cleared under the brand name. He submits that Commissioner has not given any finding on the Board s circulars.

9. He drew the attention of the Bench to Circular dated 25.3.2011 and he referred to para 5.2.1 wherein Board once again clarified and reiterated again when the levy was re-introduced to branded jewellery where use of alphabets or numbers (only stylized) cannot be registered as a brand name or trade mark. This is again for identification when the customer returns of the jewellery. Board clarified that it will not a ract levy. He drew a en on to another Board s circular dated 2.3.2012 para 5 wherein Board has categorically clarified that excise duty is leviable on jewellery on which

trade/brand name or any such mark or symbol is affixed or embossed on the jewellery. Board further clarified that if such brand name is not affixed or embossed on the jewellery or on article itself but appears on the packing such as jewellery box or pouch or even on the warranty card or certificate of quality, such goods will not be treated as branded jewellery and will not be liable to excise duty.

10. He reiterated paragraph 36 at pages 29, 30 and 31 and also paragraphs 37, 38, 39, 40 and 42 of the Grounds of Appeal and submits that indica ng alphabet such as Q or I along AM or AB does not indicate communica on between product and the company as a brand. Usage of these letters does not give any impression or relation between the company and the products. Once they have given up affixing their logo TANISHQ , jewellery is no longer to be called as jewellery with brand name or trade name. All these facts were explained before the adjudicating Commissioner but no findings were given and also Commissioner failed to appreciate Chapter Note XIII to Chapter 71 which is specific to the Chapter. The brand name TANISHQ is not embossed or affixed on the jewellery which cannot be classified under branded jewellery as per Chapter Note to Chapter 71. He relied on the following decisions:-

(a) BHEL Ancillary Association Vs. Collector of Central Exise - 1990 (49) ELT 33 (Mad.)

(b) Commissioner Vs. ITC Ltd. - 2002 (142) ELT A79 (SC)

11. He also submitted that in trademark, a single letter of alphabet cannot be registered under Trademarks Act. He submitted that case law relied by the adjudicating Commissioner CCE Vs. Australian Foods (India) Ltd. 2013 (287) ELT 385 (SC) is dis nguishable and not applicable to their case as the Hon ble Supreme Court in the above case held it has no relation to ruling on the brand name defined for the purpose of SSI Notification No. 1/93 whereas for the branded jewellery Explanation VIII is not borrowed as the Chapter Note XIII of Chapter 71 itself provides the definition of branded jewellery. He submits that all the Board s circular and the Chapter Note and the decisions were placed before the adjudicating Commissioner whereas in the impugned order the Commissioner failed to give any reasons or distinguished the same.

12. On limitation, the learned Senior Advocate submitted that the first show-cause notice dated 3.3.2009 is hit by limitation. He produced correspondences with the Department from the date when they decided not to use the brand name on the jewellery in the paper book Volume I and submitted that they duly intimated on 19.9.2005 and subsequently Department sought series of clarification which was gain replied. Subsequently, the audit carried out investigation on 24.2.2009. He drew attention to para 7 of show-cause notice which is at page 130 of the appeal paper book wherein it has been alleged mis-declaration and suppression of facts. Whereas in the impugned order, in para 21, the adjudicating authority holds that the assessment of duty on the jewellery was provisional from March 2005 to March 2006 07 which is totally contradictory to the allega ons made in para 7 of the show-cause notice. On limitation, he relied on the following decisions:-

(a) CCE Vs. Chemphar Drugs & Liniments Ltd. 2002-TIOL-266

(b) Anand Nishikawa Co. Ltd. Vs. CCE 2005 (188) ELT 149

(c) Pushpam Pharmaceu cals Company Vs. CCE 1995 (78) ELT 401

(d) Con nental Founda on JV Vs. CCE 2007 (216) ELT 177

Therefore, he submitted that there is no suppression of facts and hence no penalty can be imposed.

13. The learned Special Counsel Shri Shridharraman appearing on behalf of Revenue submitted his paper book and written synopsis on the Grounds of Appeal and the citations relied and reiterated the findings of the adjudicating authority. He drew attention to the Tribunal s Stay Order dated 21.2.2013 wherein at para 4, the Tribunal while passing the stay order clearly observed that the issue regarding the reference to the Board s Circular dated 29.3.2005 is not applicable to the present case. Regarding suppression and limitation, he submits that suppression and extended period has been invoked only in the first show-cause notice and whereas in the second show cause notice neither suppression nor extended period is invoked and the demand is well within the normal period. He submits that even in the first show-cause notice, the entire demand is not time barred.

14. On merits, he reiterated the findings of the adjudicating authority and submits that the appellants are manufacturing branded jewellery and they have two brands TANISHQ and GOLDPLUS . From 2006, the same jewellery of TANISHQ was GOLDPLUS were cleared without logo, instead they started affixing and marking on the jewellery with le er Q and I . They have replaced TANISHQ brand name with Q . The le er Q is automa cally iden fied as jewellery of TANISHQ brand. Commissioner has rightly relied on CCE Vs. Grasim Industries case reported in 2005 (183) ELT 123 (SC). He further submits that Grasim Industries decision was relied only for the limited purpose of how the iden fy the brand name. He also submits that the inscrip on of Q is crucial as they decided to mark Q only a er they decided withdraw affixing TANISHQ . It is also admi ed by the appellant I is to iden fy GoldPlus brand jewellery and Q is related to iden fy TANISHQ brand which is a costly brand of jewellery compared I . He relied on the decision of the Tribunal in the case of CCE, Coimbaore Vs. Metriplex Pumps Ltd. 2011 (272) ELT 685 wherein this Tribunal has clearly held that use of single le er K on the pumps as well as on the cover of the pumps. He drew a en on of the Tribunal s stay order wherein this Tribunal has discussed the use of le er Q which also refers to guarantee for its quality. He countered all the citations relied on by the learned Senior Advocate and submitted that these are not applicable to the facts of the present case. He relied on CC Vs. Phoenix Interna onal 2007 (216) ELT 503 (SC) and drew a en on to para 11 of the judgment, wherein the Hon ble Supreme court held that inten on of the appellant is an important factor. Regarding penalty, he submitted that no penalty imposed under section 11AC. Penalty was imposed only under Rule 25 and the adjudicating authority has correctly imposed the penalty. He relied on the following decisions:-

(a) D.K. Arrawala Vs. CCE, Mumbai 2011 (138) ELT 684

(b) Marsha Pharma Pvt. Ltd. Vs. CCE, Vadodara 2009 (248) ELT 687

(c) Hind Nippon Rural Industries Ltd. Vs. CCE, Bombay 2011 (136) ELT 1289

(d) Granite (India) Ltd. Vs. CCE, Coimbatore 1997 (92) ELT 84

(e) CCE Vs. Grasim Industries Ltd. 2005 (183) ELT 123 (SC)

(f) CCE, Chennai Vs. Australian Foods (India) Pvt. Ltd. 2013 (287) ELT 385 (SC)

(g) Commissioner of Customs Vs. Phoenix Interna onal Ltd. 2007 (216) ELT 503 (SC)

15. In his rejoinder, learned Senior Advocate countered the arguments of Revenue and submits that when the ma er is being heard at final hearing, the Tribunal s interim order cannot be taken as precedent. He submits that the Board s circular are mandatory which is binding on the authori es and proper course is that the adjudicating authority should have referred to the Board as per the Board s circular dated 29.12.2005. If there is a doubt whether Q and I is a brand name, the course le is to refer to the Board. Further, he submits that the le er Q is marked or affixed only for identification not for sale of the goods with brand name. it is a general trade practice to put any letter or inscription on the back of the jewellery by the manufacturer. The department s reliance on the Tribunal s decision in the case of Metriplex Pumps Ltd. (supra) is not applicable and he also submits that the Hon ble Supreme Court s decision in the case of CC Vs. Phoenix International (supra) is not at all applicable to their case and it cannot be equated with the facts of the case on hand.

16. We have carefully considered the submissions of both sides and examined the records. The issue to be decided in the present appeals is (1) whether the mark/letters "Q" and "I" embossed on the jewellery manufactured and cleared by the appellants during the material period is a brand name or trade name and chargeable to duty of excise as "Branded jewellery" or otherwise and (2) whether the demand is hit by limitation and the demand confirmed and penalty imposed on the appellants is sustainable or otherwise. Appellant M/s.Titan Industries Ltd. are registered with Central Excise for manufacture of branded jewellery. There is no dispute on the fact that appellant is engaged in the manufacture and sale of jewellery with their brand "TANISHQ" which is one of the largest jewellery brand. When excise duty was levied on branded jewellery from March 1.3.2005, the appellants had discharged excise duty on the branded jewellery bearing the brand name of 'TANISHQ'. Appellants also had another brand "Goldplus" which is meant for semi-urban and rural customers.

17. The period of dispute is from September 2005 to July 2009. The Adjudicating authority in his findings had discussed all the contentions of the appellants in detail and their submissions made before this Tribunal are one and the same.

18. On the preliminary issue raised by the appellant that the adjudicating authority not followed the directions of Board's circular dt. 29.12.2005 and decided the issue without referring to the Board, we find from para-3 of the said circular, it is stated that when the Commissioner is in doubt and not in a position to decide whether a particular jewellery is branded jewellery or not, such cases should be referred to the Board. In the present case, we find that the adjudicating authority had no doubt on the issue and there was no seizure and regular show cause notices were issued and the charges/allegations were brought out in the said notices for demanding excise duty on branded jewellery. Therefore, we do not find any merit in the appellant's plea. We hold that the Commissioner of Central Excise had not violated the Board's circular and duly followed the principles of natural justice in this case.

19. We now deal with the merits of the case, whether the jewellery manufactured and cleared by appellant is a branded jewellery and chargeable to excise duty or not. It is pertinent to see the history of levy of excise duty on gold jewellery. Articles of gold jewellery are classifiable under

Chapter 71 of Central Excise Tariff Act and it was fully exempted from excise duty by Notification 6/2002 dt. 1.3.2002 (S.No.171).

20. In 2005-06 Budget, the government imposed excise duty of 8% on branded articles of jewellery of Heading 7113 of Central Excise Tariff. The duty is leviable only on the jewellery where the brand name or trade name indelibly affixed or embossed on the articles of jewellery itself. Necessary amendment was brought in Chapter 71 and Chapter Note 12 and Chapter Note 13 was inserted. Chapter Note-12 defined "brand name" or "trade name" of jewellery and

Chapter Note-13 specified that the process of affixing or embossing trade name on the articles of jewellery of Heading 7113 shall amount to "manufacture". The corresponding Central Excise Notification No.4/2005 (Sl.No.14) and 5/2005 (Sl.No.171) both dt. 1.3.2005 were issued. The relevant chapter Note 12 & 13 of Chapter 71 are produced as under :-

"12. In this Chapter, "brand name" or "trade name" means a brand name or trade name, whether registered or not, that is to say, a name or a mark, such as 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 some person using such name or mark with or without any indication of the identity of that person.

13. For the purposes of heading 7113, the processes of affixing or embossing trade name or brand name on articles of jewellery shall amount to "manufacture".

The relevant Sl.No.14 of the Notification No.4/2005 and the Explanation to the Notification is reproduced as under :-

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Rate under the First Schedule	Rate under the Second schedule
2.				
2.				
3.				
4.				
5.				
14.	7113	Article of jewellery on which brand name or trade name is indelibly affixed or embossed on the articles of jewellery itself.	2%	-

Explanation.- For the purposes of this notification, 'brand name or trade 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 as 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.

As seen from the above, the definition of brand name and trade name is identically worded in both Chapter Note-12 and in the notification and the definition is unambiguous. It has been clearly brought out in the findings of the adjudicating authority that appellants were duly registered with Central Excise and paid excise duty on the branded jewellery cleared under the brand name "TANISHQ". Subsequently the appellants decided not to use the logo of "TANISHQ". Instead, they started using the letter "Q" for jewelleries which were earlier cleared under the brand name "TANISHQ" and under letter "I" for the jewelleries cleared under the brand name "GoldPlus" respectively.

21. On perusal of the photographs of the branded jewellery reproduced in the OIO and copies produced by appellant before Tribunal, we find that letters "Q" and "I" are indelibly embossed on the jewellery. These marks "Q" & "I" are embossed on the jewellery in place of 'TANISHQ' and "GoldPlus" brands. The appellant's only contention that since they stopped using the logo of "TANISHQ" on the jewellery it is not chargeable to duty as branded jewellery and heavily relied the Board's circular No.354/38/2011-TRU dt. 2.3.2012 and Circular No.

B-1/1/2005-TRU dt. 4.3.2005. Board's circular dt. 2.3.2012 is reproduced as under :-

Branded precious metal jewellery Levy of Excise duty Clarifica ons

Instruction F. No. 354/38/2011-TRU, dated 2-3-2012

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Clarification regarding levy of Excise duty on branded precious metal jewellery - Regarding.

I am directed to refer to D.O.F. No. B-1/3/2011-TRU, dated 25-3-2011 at the post-budget stage 2011-12 containing the following clarification about the scope of Central Excise levy applicable to precious metal jewellery of CETH 7113 manufactured or sold under a brand name :

ABC jewellers adver ses and sells its products under the brand Star or puts a logo like ABC i.e. in a stylized manner. It also puts the same brand name or an abbreviation thereof or a mark which has a connection with such brand name either on the jewellery or article itself or on the packing such as the jewellery box or pouch or even on the warranty card or certificate of quality. Such goods will clearly be treated as branded and will be liable to duty.

2. It is learnt that based on the said clarification some enquiries have been initiated by the departmental agencies seeking to demand duty on such articles of jewellery which are packed in boxes, pouches etc. bearing a trade name or brand name or mark. References have since been received from the Trade requesting for providing clarity on levy of excise duty on jewellery sold under a Brand name. The industry has drawn attention to condition no. 8 of notification no. 5/2006-C.E., dated 1-3-06 which provides that the exemption shall not be applicable to articles of jewellery of heading no. 7113 on which brand name or trade name is indelibly affixed or embossed on the articles of jewellery itself. It has been argued that accordingly only such jewellery where brand name or trade name is indelibly affixed or embossed on the articles of jewellery itself should attract excise duty and duty should not be charged on the articles which do not themselves bear such marking but which are packed in a jewellery box or pouch bearing a trade name or brand name or in whose case, the warranty card or certificate of quality issued at the time of sale bears a trade name or brand name.

3. The issue has been examined. Condition no. 8 of notification no. 5/2006-C.E., dated 1-3-06, is also relevant in this regard. The said condi on provides that the exemp on shall not be applicable to articles of jewellery of heading no. 7113 on which brand name or trade name is indelibly affixed or embossed on the ar cles of jewellery itself.

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

Board's Circular dt. 4.3.2005 is reproduced as under :-

Government of India

Ministry of Finance (Department of Revenue)

Tax Research Unit

Subject : Excise duty levy on branded articles of jewellery.

In this year's budget 2005-06, an excise duty of 2% has been imposed on branded articles of jewellery of heading 7113 of the Central Excise Tariff. The duty is leviable only if the brand name or the trade name, as defined, is indelibly affixed or embossed on the article of jewellery itself.

In this context, relevant extracts of Finance Ministers budget speech is reproduced below :

"...expensive and premium jewellery is now manufactured and sold under alluring brand names. On such branded jewellery, I propose to levy an excise duty of 2 per cent. I may clarify that there is no levy on unbranded, jewellery, including unbranded gold jewellery."

It is thus clear that for attracting this levy, the article of jewellery must be marketed and sold under a brand name. Despite this, there have been some misgivings among a section of the trade about the scope of this levy, To allay the apprehensions of the trade, some illustrations are given below to explain the scope of this levy :

(i) A jeweller "ABC Jewellers" gets his articles of jewellery, from gold smiths/job workers who put a mark/sign/initials, etc. on the article of jewellery. This is only to identify that the article of jewellery was received from a particular goldsmith, etc. This is not branded jewellery and will not attract the tax.

(ii) "ABC jeweller", when it sells articles of jewellery to customers, puts a distinctive sign/mark/initials etc. on the jewellery. This is again for the purpose of identification so that when the jewellery is returned to ABC jewellers, they will recognize the jewellery as their own. ABC jewellers does not sell the jewellery under a brand name. This again is not branded jewellery, and will not attract the tax.

(iii) "ABC jewellers" advertises and sells its products under the brand Star, It also puts the same brand name or an abbreviation thereof or a mark which has a connection with such brand name on the article of jewellery. Such jewellery will be branded jewellery and will be liable to the tax.

3. As regards "hallmarked" gold jewellery, it is observed that hallmarking is the accurate determination and official recording of the proportionate content of precious metal in gold. Hallmarks are thus only official marks used as a guarantee of purity or fineness of gold jewellery, and cannot be treated as 'branding' for the purposes of the excise levy.

4. Whether a particular name or mark or symbol etc. is a brand name or not is a matter of fact, and can be ascertained as how the name is understood in commercial parlance. In the jewellery trade, there are certain well known brand names like 'Tanishq', 'Sangini', etc. and the scope of the levy is only with respect to jewellery marketed and sold under such brand names as clearly, understood in the trade. It is requested that the gold dealers/manufacturers associations may be suitably briefed about the scope of the excise duty levied on branded articles of Jewellery so that there is no inconvenience to the trade.

Yours faithfully

-Sd/-

V. Sivasubramanian

Deputy Secretary (TRU)

Tele No.23092236

As seen from the above Board circulars, the Government has clarified that excise duty is leviable on articles of jewellery where brand name or trade name is indelibly affixed or embossed on the articles of jewellery and duty is not leviable on any jewellery which do not themselves bear any marking of trade name or brand name. The appellants, in the present case, embossed the mark or symbol or letter 'Q" and "I" on the jewellery and it is in connection with sale of goods indicating the goods belonged to the appellant. The very fact that the goods bear the markings "Q" & "I" which were earlier cleared as "Tanishq" and "GoldPlus" logo clearly conforms to the definition of brand name stipulated in Note 12 to Chapter 71 and Explanation to the said Notification.

22. It is pertinent to state that this is not a case that appellants cleared unbranded jewellery without any mark or symbol embossed on the jewellery. They have only replaced the logo of brand/trade name "Tanishq" and 'GoldPlus" with marking "Q" & "I". We find from the appellants letter dt. 6.7.2006 addressed to the Deputy Commissioner of Central Excise, Hosur which is also reproduced in para-19 of the OIO wherein they have clearly admitted that the product will have a mark for the purpose of identifying that it is their product.

23. It is relevan to see that the definition of brand name or trade name defined under Chapter Note 12 to Chapter 71 and the Explanation to the Notification are wide and covers any name whether registered or not and includes a mark, symbol, letter which is used in relation to the product so as to indicate a connection in the course of trade between the product and the appellants. The appellant clearly admitted before the adjudicating authority that articles of jewellery which was earlier cleared under the brand name of "Tanishq" has now changed to letter "Q" and the logo "GoldPlus" is replaced by letter "I" and the product line is also maintained separately from the manufacture stage till the clearance and sale. The appellant's plea that letters "Q" and "I" are embossed only for the purpose of identification and not for the purpose of brand name is beyond acceptance as the appellants are one of the reputed branded jewellery manufactures in India manufactured and cleared branded jewellery under their brand name "Tanishq" & "GoldPlus" in the past and all of a sudden decided not to use the brand name/logo of "Tanishq" and "GoldPlus" instead they have started embossing mark i.e. "Q" and "I" and this act is nothing but replacement of one logo with other mark on the same product. Therefore the appellants relying Illustration II of Board's circular that they have only used these le ers Q and I only for the purpose of iden fica on is not jus fied and not applicable to the appellant s case. Further, we find that definition of brand name given in Chapter Note 12 and the Explanation to the notification are similarly worded to the defini on of brand name given in the SSI exemption notification. The Hon'ble apex Court in the case of CCE Trichy Vs Grasim Industries Ltd.(supra) and held laid down the principle which clearly held that a name or writing need not be a brand name or trade name in a sense it is normally understood. Even ordinary mark or letter is sufficient to indicate a connection between the product and the company. The relevant paragraphs of apex court's decision in the case of CCE Trichy Vs Grasim Industries Ltd. 2005 (183) ELT 123 (SC) are reproduced as under :-

"16. This Court?has, in the case of Royal Hatcheries Pvt. Ltd. v. State of A.P. reported in 1994 Supp (1) SCC 429, already held that words to the effect that is to say qualify the words which precede them. In this case also the words that is to say qualify the words brand name or trade name by indicating that these terms must therefore be understood in the context of the words which follow. The words which follow are of wide amplitude and include any word, mark, symbol, monogram or label. Even a signature of an invented word or any writing would be sufficient if it is used in relation to the product for purpose of indicating a connection between the product and the other person/company. It is thus clear that the Tribunal s decision in Nippa Chemicals (Pvt.) Ltd. s case is clearly erroneous and will stand overruled.

17. In the case of? Collector of Central Excise, Goa v. Christine Hoden (I) Pvt. Ltd. reported in 1999 (113) E.L.T. 591 the ques on was whether the use of the word comfit with the name Chris ne

Hoden London, Rome Stockholm would disen tle the Respondents therein from the benefit of the No fica on. It was however found, as a ma er of fact, that the word comfit was owned by the Respondent. It was on that basis held that the Respondents therein were entitled to the benefit of Notification. To this extent the Tribunal was right. However, the Tribunal has unnecessarily also gone on to comment as follows :

Mere indica on of the foreign company s name does not create any association in the course of trade between the goods and the foreign company.

There would be no purpose in indica ng the foreign company s name in rela on to the product except to indicate a connection between the product and the foreign company. Therefore, to this extent, the Tribunal is not correct.

18. In the case of? Commissioner of Central Excise, Hyderabad v. Sarat Electronics reported in 2004 (167) E.L.T. 404 the question was whether the Respondents (therein) were entitled to benefit of Notification No. 1/93-C.E., which Notification was identical to the one under consideration by us. The Respondents therein used the words SARAT in bold le ers following which the words A quality product from ITL group and Technical licencee of ITL were also printed. The Tribunal, following its earlier decisions, held as follows :

6. In the facts of the present case, we are of the view that the expression ITL was used to convey the name of the company and not as a trade mark. It showed that the technical know-how was obtained from Instrument Techniques Pvt. Ltd. The expression A quality product from ITL group also would not mean that the product was manufactured by Instrument Techniques Pvt. Ltd. According to us, the facts of the case are more akin to the facts in Weigand India (P) Ltd. and Chemguard Coa ngs Pvt. Ltd. rather than Chopra Appliances.

In our view, the Tribunal was clearly erroneous. As indicated above, the Explanation makes it clear that it need not be a trade name or brand name as commonly understood. Any name or mark or writing, even the name of a company is sufficient so long as it is used for the purpose of indicating a connec on between the product and that Company. The use of the words A quality product from ITL group clearly showed an intention to show a connection between the product and the ITL group. These words indicated that the quality of the product was the same as that of a product of ITL group. If use of such words did not disentitle a party from the benefit of the Notification, we fail to understand what sort of words would disentitle a party. The decision of the Tribunal in this case is clearly erroneous and will stand overruled.

19. In this view?of the matter, we set aside the impugned Judgment and restore the Order passed by the Commissioner of Central Excise dated 19th May, 1999."

The learned Commissioner in his findings had relied the above judgement. Though the above decision is related to SSI exemption, the ratio of apex Court is squarely applicable to the present case as the supreme court clearly spelt out the scope of brand name and trade name and clarified by the words "that is to say a name or a mark" would be sufficient. Considering the wordings used in Chapter Note 12 and the Explanation to the notification 4/2005 are identical to the wordings of definition given under SSI notification the ratio laid down by the the Supreme Court is squarely applicable to the present case.

24. Appellants relying BHEL Ancillary Association case and CCE Vs ITC case (supra) are distinguishable as in the present case gold jewellery is embossed with the indelible mark of "Q" & "I" which is to indicate a connection of the goods and the appellant in the course of trade. The mark Q & I embossed on the jewellery is clearly iden fiable as products of M/s.Titan Industries Ltd. and the markings of Q & I which are embossed in place of brand name of Tanishq and GoldPlus . If the appellant's inten on was only for iden fica on purpose and there was no need for them to emboss specific mark Q for jewellery to their Tanishq brand and use the le er I for the brand Goldplus . Therefore it is evident that the purpose of affixing of indelible embossing of Q and I marks on the jewellery manufactured and cleared by the appellant is to indicate the connection between the product and the appellant company. The use of "Q" & "I" on the jewellery is to show the product is from Titan Industries and it established the intention to show the connection between the jewellery and M/s.Titan Industries. In addi on to mark Q and I , the appellant also embossed the mark AEI and AE which are marks to indicate persons who manufactured the jewellery. Therefore, by respectfully following the apex Court decision, we have no hesitation to hold that mark Q & I embossed on the jewellery manufactured and cleared by appellant is the brand/trade name of the appellants even whether registered or not. The mark Q simply replaced the logo of Tanishq which was brand jewellery since 1994. The jewellery manufactured and cleared by the appellant embossed with the mark of Q & I clearly sa sfies the defini on of branded jewellery defined in Chapter Note 12 of Chapter 71 of CET and the Explanation to the notification No.4/2005 and chargeable to excise duty. The demand of the differential duty confirmed by the adjudicating authority in the impugned order is liable to be upheld.

25. Notwithstanding to our above findings, we also find from the findings of adjudicating authority that these jewelleries were cleared and marketed by the appellant s own "Tanishq" show rooms and exclusive show rooms and it is admitted by the appellant that these products were marketed only through their "Tanishq" outlets and the invoices bear the brand name of Tanishq . Appellant themselves have admitted vide their letter dt.6.7.2006 that bills and certificate of authen city were issued in the name of Tanishq and outer cover of the bags bears the brand name of Tanishq . In this regard, the Hon ble Supreme Court in their recent judgement in the case of CCE Chennai Vs Australian Foods India (P) Ltd. (supra) clearly held that brand name physically manifestation on the goods is not a compulsory requirement. The apex Court held that brand name cannot be reduced to a label or sticker embossed on the goods and held that the test of whether the goods branded is an indication of connection conveyed in the course of trade between the goods and the person using the brand name. The relevant paragraphs of the apex court's decision in the case of CCE Chennai Vs Australian Foods India (P) Ltd. are reproduced as under:-

14.?We feel that to hold from the above passages that every goods must be physically stamped with a brand or trade name to be considered a branded goods in terms of the notification, and that, one is forbidden to look beyond the specified goods into the surrounding environment of the goods in construing if it is a branded goods or not, would be a complete misunderstanding of the above judgment and a distortion of the concept of a brand or trade name. The above judgment makes no such observation and was delivered on a completely different set of facts and circumstances. It involved a case of undergarments manufactured by a producer P2, which used branded elastics produced by P1, and retained the brand name of P1 in the final product. P2 was denied exemption under the same notification involved in the present case because of the appearance of brand name of another i.e. P1, not covered by the same notice. P2 argued that the presence of P1 s brand name should not be taken as a basis for disqualification from the benefits of the exemption since the customer buying the goods would continue to associate the goods with P2 and not P1, thus making it a branded goods of only P2. This Court rejected the contention and held that P1 is providing a stamped input for cap ve consump on to P2 because he wants the ul mate customer to know that there is a connec on between the product and him . The Court further observed that the term specified goods is used without any caveats and hence rejected the conten on that some consideration should be given to the fact that P1 was used only as an input in the making of the final product of P2. It is in this background that this Court observed that the requirement of the no fica ons must be adhered to strictly and cannot be diluted by subs tu ng the term specified goods with the nature of goods or the manner of disposal. In case the specified goods clearly exhibits a brand name of another not covered by the notification, it would squarely fall within the confines of Para 4 of the notification; looking beyond the specified goods to consider whether it is an input or not is not necessary in case of a conspicuous brand name. However, to apply this principle to the scenario of a specified goods that does not contain a brand name at all would be equivalent to fitting a square peg in a round hole. If a final product is marked or stamped with a brand name, it is clearly a branded goods; to stretch this principle to imply that one not marked by any brand is an unbranded goods, is untenable. In case a scrutiny of the goods itself fails to reveal a brand name then the search must not end there; one ought to look into the surrounding circumstances of the goods to decipher, if it is in fact branded or not.

15.?We are of the opinion that such an approach is necessary to maintain the essence of the concept of a brand name. A brand/trade name must not be reduced to a label or sticker that is affixed on a goods. The test of whether the goods is branded or unbranded, must not be the physical presence of the brand name on the goods, but whether it, as Explana on IX reads, is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indica on of the iden ty of the person. Therefore, whether the brand name appears in entirety or in parts or does not appear at all cannot be the chief criterion; primary focus has to be on whether an indication of a connection is conveyed in the course of trade between such specified goods and some person using the mark. Highlighting this principle, this Court in Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders - (2004) 11 SCC 801 = 2004 (165) E.L.T. 481 (S.C.) observed thus :-

6.?The Tribunal had also held that under the no fica on the use must be of such brand name . The Tribunal has held that the words such brand name show that the very same brand name or trade name must be used. The Tribunal has held that if there are any differences then the exemption would not be lost. We are afraid that in coming to this conclusion the Tribunal has ignored Explanation IX. Explanation IX makes it clear that the brand name or trade name shall mean a brand name or trade name (whether registered or not), that is to say, a name or a mark, code number, design number, drawing number, symbol, monogram, label, signature or invented word or writing. This makes it very clear that even a use of part of a brand name or trade name, so long as it indicates a connection in the course of trade would be sufficient to disentitle the person from getting exemption under the notification. In this case, admittedly, the brand name or trade name is the word ARR with the photograph of the founder of the group. Merely because the registered trade mark is not entirely reproduced does not take the respondents out of clause 4 and make them eligible to the benefit of the no fica on.

16.?Similarly, in Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies - (2004) 11 SCC 798 = 2004 (166) E.L.T. 23 (S.C.), it was noted as follows :

6.?We have today delivered a judgment in CCE v. Rukmani Pakkwell Traders, (2004) 11 SCC 801 wherein we have held in respect of another notification containing identical words that it makes no difference whether the goods on which the trade name or mark is used are the same in respect of which the trade mark is registered. Even if the goods are different, so long as the trade name or brand name of some other company is used the benefit of the notification would not be available. Further, in our view, once a trade name or brand name is used then mere use of additional words would not enable the party to claim the benefit of the no fica on.

8.?It is se led law that in order to claim benefit of a no fica on, a party must strictly comply with the terms of the notification. If on wording of the notification the benefit is not available then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred. The Tribunal has based its decision on a decision delivered by it in Rukmani Pakkwell Traders v. CCE (1999) 109 E.L.T. 204 (CEGAT). We have already overruled the decision in that case. In this case also we hold that the decision of the Tribunal is unsustainable. It is accordingly set aside.

17.?As aforesaid, once it is established that a specified goods is a branded goods, whether it is sold without any trade name on it, or by another manufacturer, it does not cease to be a branded goods of the first manufacturer. Therefore, soft drinks of a certain company do not cease to be manufactured branded goods of that company simply because they are served in plain glasses, without any indication of the company, in a private restaurant. The goods will continue to be a branded goods of the company that manufactured it. The same principle would apply in the case of potato chips, chocolates, biscuits, wafers, powders and other such goods often sold from various locations.

18.?In case of goods sold from exclusive single brand retail outlets or restaurants or stores, the fact that a goods is sold from such a store ought to be a relevant fact in construing if the goods is its branded goods or not. In the case of such goods, perhaps a rebuttable presumption arises in favour of such goods being branded goods of the specified store. Such a presumption can be rebutted if it is shown that the specified goods being sold is in fact a branded goods of another manufacturer. Thus, branded potato chips, soft drinks, chocolates etc. though sold from such outlets, will not be considered to be goods of such outlets. However, all other goods, sold without any appearance of a brand or trade name on them, would not be deemed unbranded goods; to the contrary, they may be deemed to be branded goods of that outlet unless a different brand or trade name appears.

19.?Hence, we hold that it is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods under the SSI notification, discussed above. A scrutiny of the surrounding circumstances is not only permissible, but necessary to decipher the same; the most important of these factors being the specific outlet from which the goods is sold. However, such factors would carry different hues in different scenarios. There can be no single formula to determine if a goods is branded or not; such determination would vary from case to case. Also, our observations must be limited to this notification and not supplanted to other laws with similar subject matter pertaining to trade names and brand names.

20.?Applying the said principles on the facts at hand, we fail to see how the same branded cookies, sold in containers, can transform to become unbranded ones, when sold from the same counter, or even from an adjoining counter, without packaging carrying the brand name. Admittedly, on the same cookies, physically bearing brand Cookie Man sold in containers carrying brand name duty is paid. It is interesting to note that learned counsel appearing on behalf of the assessee first argued that to determine if the cookies sold from the counter are branded or not, scrutiny must be limited to the case of the cookies themselves without looking at the surrounding circumstances; yet went on to argue that the tissues and plates they were served on did not bear the brand of the specified goods. Either the environment of the goods can be looked into, or cannot be taken into consideration at all. Once it is established, as in the instant case, that the environment of the goods can be gone into to construe if it is branded or not, we do not see why the environment of the goods should be limited to the plates and tissues, on which they are served. As aforesaid, in the instant case, the cookies were sold from a dedicated outlet of Cookie Man where no other products but those of the assessee were sold. The invoices carry the name of the company and the cookies were sold from a counter of the store. In our opinion, the store s decision to sell some cookies without containers that are stamped with its brand or trade name does not change the brand of the cookies. We are convinced that the cookies sold even without inscription of the brand name, indicate a clear connec on with the brand name, in the course of assessee s business of manufacture and sale of cookies under the brand name Cookie Man . They con nue to be branded cookies of Cookie Man and hence cannot claim exemp on under the SSI No fica on.

The ratio of the above apex court decision is squarely applicable to the facts of the present case as these gold jewelleries are sold in exclusive Tanishq show rooms and the invoices/bills and the cer ficate of authen city etc. bear the appellant s brand name Tanishq and the appellant's decision to sell the jewellery without using logo of "Tanishq" or "Goldplus" but affixed with the markings of Q & I and sold through their exclusive outlets/showrooms clearly falls within the definition of "Brand name/Trade name of Chapter Note 12 and the Explanation to the Notification No.4/2005 dt.1.3.2005. Therefore by respectfully following the ratio of apex Court decision in the case of Grasim Industries and Australian Foods India Pvt. Ltd. (supra) we have no hesitation to hold that jewellery manufactured and cleared by the appellants during the relevant period are branded jewelllery and chargeable to duty.

26. As regards the limitation issue, it is clearly brought out in the findings of the adjudicating authority that appellants have cleared branded jewellery on payment of central excise duty and suddenly on their own decided not to affix registered brand name of Tanishq and GoldPlus and chosen a novel method to replace with embossing of marking of le ers Q & I represen ng both Tanishq and GoldPlus and claimed that they were clearing as unbranded jewellery. Further the demand is within the normal period. Therefore, question of limitation does not arise in this case.

27. As regards the imposition of penalty, we find that the adjudicating authority imposed penalty under Rule 25 of Central Excise Rules. Taking into overall circumstances of the case the penalty imposed is on the higher side and merits reduction in quantum of penalty.

28. In view of our forgoing discussions, we hold that mark Q & "I indelibly embossed on the jewellery manufactured and cleared by the appellant during the relevant period is a branded jewellery covered under Chapter Note 12 of Chapter 71 of CET and the Explanation appended to the

Notification No.4/2005 dt. 1.3.2005 and chargeable to excise duty as per Sl.No.14 of Notification No.4/2005 as amended. Accordingly the demand of differential duty of Rs.49,83,39,799/- (Rupees Forty nine crores eighty three lakhs thirty nine thousand seven hundred and ninety nine only) and Rs.14,07,73,564/- (Rupees Fourteen crores seven lakhs seventy three thousand five hundred and sixty four only) confirmed by the adjudicating authority is upheld along with interest.

29. However, we reduce the penalty of Rs.4,98,33,980/- to Rs.2,00,00,000/- (Rupees Two crores only) and from Rs.1,40,77,360/- to Rs.50,00,000/- (Rupees Fifty lakhs only) respectively. The impugned order is upheld but for reduction in penalty indicated as above and the appeal is partly allowed in the above terms. The MA filed by department gets disposed.

(Pronounced in open court on 15.2.2016)

(P.K. CHOUDHARY) (R. PERIASAMI)

Judicial Member Tehnical Member