CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH, COURT NO. 2

Excise Appeal No. 20695 of 2023

[Arising out of the Order-in-Original No. COC-EXCUS-000-COM-7/2023-24/CEX/Commr dated 23.06.2023 passed by the Commissioner of Central Tax & Central Excise, Kochi.]

Kalyan Jewellers India Pvt Ltd
Corporate Office TC 32/204/2
Sitaram Mill Road, Punkunnam
Thrissur, Kerala - 680002. **.....Appellant**

Versus

Commissioner of Central Tax, Cochin,
CR Building, I.S Press Road Kochi
Ernakulam, Kerala 682018 **.....Respondent**

Appearance:

Mr. Ravi Raghavan, Mr. Karthik Nair and Mr. Akhil Verghese, Advocates for the Appellant.
Mr. M. A. Jithendra, Authorised Representative for the Respondent.

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20413 /2025

Date of Hearing: 09.12.2024
Date of Decision: 27.03.2025

Per: P.A. Augustian

The issues involved in the present appeal are whether the;

i. articles of silver jewellery/ articles of silver manufactured by the appellant are falling under CETH 7113 or 7114.
ii. benefit of exemption under Notification No. 12/2012 dated 17.03.2012 amended from time to time in respect of silver jewelry is available to the Appellant.
iii. demand of excise duty can sustain on goods exported.
iv. hedging amounts to trading of goods.

v. Appellant has availed ineligible credit in respect of renting of motor vehicles and repair and maintenance of motor vehicle.

2. The Appellant is engaged in manufacture and sale of gold, diamond and silver jewelry and registered under the service tax law. Based on the intelligence report regarding evasion of excise duty on the goods manufactured and cleared without payment of duty, violating the conditions of exemption notification, etc., proceedings were initiated and on conclusion of the investigation, show cause notice was issued and thereafter Adjudication authority as per the impugned order, confirmed the demand of central excise duty along with interest and also imposed penalties. Aggrieved by said order, present appeal is filed before the Tribunal.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that the entire demand is barred by limitation since the demand is made for the period from 01.03.2016 to 30.06.2017 and Show Cause Notice (SCN) was issued on 03.01.2021. In this regard, Ld. Counsel for the Appellant submits that there is no allegation of suppression of facts. The Appellant had paid appropriate duty on sale of gold and reported in ER-8 returns. Therefore the allegation that the Appellant failed to classify the goods by paying appropriate duty while filing ER-8 returns is factually incorrect. The entire issue involved in the present case is regarding interpretation and there is no intention on the part of the Appellant to evade payment of excise duty. Moreover the Appellant has not collected the excise duty from the customers on sale of the goods. All the transactions are duly accounted in the books of accounts and the same were audited by the Central Excise Audit team from time to time. Facts being so, there is no reason or justification to allege suppression of facts and to invoke the extended period of limitation. Ld. Counsel relied on large number of decisions/ judgments to support their contentions invoking the extended period of limitation including the following:-

1. Khandelwal Construction Co. Vs. C.C.E., Jaipur-I, 2019 (5) TMI 235

2. CCEx Vs. Kolety Gum Industries, 2016 (335) ELT 581 (SC).

3. M/S. Gupta Power Infrastructure Limited and Shri M. Gupta Vs. Commissioner of CGST & CX Bhubaneshwar Commissionerate, 2019 (12) TMI 526 - CESTAT Kolkata

4. Compark E Services Pvt. Ltd Vs. CCE & ST, Ghaziabad, 2019 (24) GSTL 634

5. Comm of Cex Vs. Steel Cast Ltd., 2011 (21) STR 500 (Guj)

6. CCE Vs. Zee Media Corporation Ltd., 2018 (18) GSTL 32 (All)

7. Uniworth Textiles Ltd., Vs. Commissioner of Central Excise, Raipur, 2013 (288) E.L.T. 161 (S.C.)

13. Commissioner Vs. Coca-Cola India Pvt. Ltd., 2007 (213) ELT 490 (SC)

14. State of Gujarat Vs. Cadila Healthcare Ltd., 2022 (381) ELT 302

4. As regards issue on merit, Learned Counsel for the Appellant draws our attention to the finding given by the Adjudication authority regarding classification of the goods. As per the declaration made by the Appellant, the goods manufactured by the Appellant are falling under the Central Excise Tariff Heading (CETH) 7113. However it is classified by the Adjudication authority as falling under CETH 7114 on the ground that CETH 7114 covers 'articles of goldsmiths' wares and articles of silversmiths' wares of precious metals. As per Note 10 to Chapter 71 of the First Schedule to Central Excise Tariff Act, 1985, the expression "articles of goldsmith's or silversmith's wares" includes such articles as ornaments, table-ware, toilet-ware, smoker's requisites and other articles of household, office or religious use. Further as per explanations provided in the Harmonized Commodity Description and Coding system (HSN), heading 7114, inter alia, include other articles for domestic or similar use such as table centre-pieces, vases, mantelpiece ornaments, plates, medals and medallions (other than those for personal adornment) etc. Considering the same, Adjudication authority held that articles of silver, other than articles of silver jewellery classifiable under CETH 7113, including lamps, bowls, spoons, table-ware etc., manufactured by the assessee, are rightly classifiable under Central Excise Tariff Item entry 7114 11 10 of the First Schedule to

Central Excise Tariff Act, 1985 and confirmed the demand of central excise duty at the tariff rate of 12.5% advalorem on these goods.

5. As regards the classification of the goods whether they are falling under CETH 7113 or 7114, Learned counsel also draws our attention to sample copies of the invoices, where it is clearly mentioned the gross weight and the other particulars and if any precious stone is available, it is separately shown in the invoices. Moreover in the impugned order, Adjudication authority also held that " *On going through these invoices, I find that the assessee was selling articles of silver jewellery and other articles of silver @Rs.56/- per gram ((inclusive of value addition), approximately, during the fourth Quarter of the financial year 2010-17. The total value of clearance of articles of silver jewellery and other articles of silver during the period from 1st March, 2016 to 30th June, 2017 amounts to Rs. 172,72,64,311/- as per the details submitted by the assessee".* Thus the finding by the Adjudication authority that the Appellant failed to produce any valid documents to prove that they had infact manufactured and removed this quantity of articles silver and silver jewelry is factually wrong. Moreover there is no allegation in the show-cause notice that goods in question were silver jewellery studded with diamond, ruby, emerald or sapphire. Thus, considering the finding to that effect is beyond the scope of show-cause notice and it is not permissible for the Adjudication Authority to traverse beyond the allegations made in the show-cause notice. Learned counsel relied on the following decisions in this regard:-

1. Prince Khadi Woollen Handloom Producers Coop. Indl. Society Ltd. Vs. Collector, 1996 (88) E.L.T. 637 (S.C.)

2. Commissioner Vs. Champdany Industries Ltd., 2009 (241) E.L.T. 481 (S.C.)

3. Commissioner of Customs Vs. Toyo Engineering, 2006 (201) ELT 513 (SC)

4. Commissioner Vs. Ballarpur Industries Ltd., 2007 (215) E.L.T. 489 (S.C.)

5. R. Ramadas v. Joint Commissioner of C. Ex., Puducherry, 2021 (44) G.S.T.L. 258 (Mad.)

6. Learned counsel further submits that though impugned order has held that articles of silver jewellery are classifiable under CETH 7113 whereas articles of silver are classifiable under CETH 7114. However,

both show-cause notice as well as impugned order are silent on the details of the goods meant to be covered by the said heading and there is no quantification of excise duty on the basis of said finding against CETH 7113 and under CETH 7114 in the impugned order. As held by Hon'ble Supreme Court in the matter of CC Vs. Coca-cola India Pvt. Ltd., reported in 2007 (213) ELT (490) SC, once demand is not quantified either in the show-cause notice or in the impugned order, there is no Revenue implication and the issue is purely academic.

7. Thus only by alleging failure of the Appellant to produce details of articles of silver jewellery and silver manufactured removed by them, it is held that during the relevant period, the appellant has manufactured and cleared articles of silver jewellery studded with precious stones. Thus the finding regarding classification of the goods as falling under CETH 7114 is unsustainable, since there is no evidence to prove that the goods manufactured by the appellant are articles of silver jewellery, studded with diamond, ruby, emerald or sapphire and in the absence of any finding regarding quantification of duty against goods falling under CETH 7113 and under CETH 7114, separately.

8. Regarding applicable rate of duty, Ld counsel submits that as per the Notification No. 12/2012-CE dated 17.03.2012, articles of silver jewellery is exempted, unconditionally. Thereafter, as per the Notification No. 12/2016-CE dated 01.03.2016, articles of jewellery where subject to 1% of excise duty and articles of silver jewellery other than the studded diamond, ruby, emerald or sapphire was subject to 'nil' rate of duty. Both the goods were subject to fulfilling the condition no. 16 as per the notification produced below:-

(1)	(2)	(3)	(4)	(5)
199	7113	(I) Articles of jewellery (II) Articles of silver jewellery, other than those studded with diamond, ruby, emerald or sapphire	1% Nil	16 -

16.	If no credit under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 has been taken in respect of the inputs or capital goods used in the manufacture of these goods.

9. Thereafter Notification No.26/2016-CE dated 26.07.2016 was issued amending the above entry as follows:

(1)	(2)	(3)	(4)	(5)
199	7113	(I) Articles of Jewellery (II) Parts of articles of jewellery (III) Articles of silver jewellery, other than those studded with diamond, ruby, emerald or sapphire Explanation. For the purposes of this exemption,-An article of jewellery or part of article of jewellery or both, produced or manufactured from an alloy (including a sintered mixture and an inter-metallic compound) containing precious metal may be treated as an article of jewellery or part of article of jewellery or both of a precious metal, if any one precious metal constitutes as much as 2% by weight of the article of jewellery or part of article of jewellery or both (excluding the weight of the precious or semi-precious stones, mounted or set), In accordance to the following: (i) an article of jewellery or part of article of jewellery or both, containing 2% or more, by weight, of platinum is to be treated as an article of jewellery or part of article of jewellery or both, of platinum; (il) an article of jewellery or part of article of jewellery or both, containing 2% or more, by weight, of gold but not platinum, or less than 2% by weight, of platinum, is to be treated as an article of Jewellery or part of article of jewellery or both, of gold; (iil) other articles of jewellery or parts of articles of jewellery or both, containing 2% or more, by weight, of silver are to be treated as articles of jewellery or parts of articles of jewellery or both, of silver.	1% 1% Nil	16 16

10. Learned counsel for the appellant submits that since, appellant has not availed cenvat credit in the respect of the input or capital goods used in the manufacturing of these goods as per Rule 3 or 13 of the Cenvat Credit Rules, 2004, appellant is entitled for availing the benefit of Notification No. 12/2016-CE dated 01.03.2016. Thereafter, vide Notification No. 26/2016-CE dated 26.07.2016, Chapter Heading 7113 was further widened to (1) Articles of jewellery (II) Parts of articles of jewellery, both at the rate of 1% duty subject to fulfillment of the condition No.16 as above. However, articles of silver jewellery other than the studded diamond, ruby, emerald or sapphire were brought under (III) having 'nil' rate of duty subject to condition No. 16. The condition No. 16 remain the same from 01.03.2016 to 02.02.2017 and during the relevant period, the goods manufactured by the appellant were subject to 'nil' rate of duty since they have complied with condition No. 16 regarding non-availment of Cenvat credit on inputs or capital goods used in the manufacturing of these goods. However, as per the Notification No. 6/2017-CE dated 02.02.2017, condition No. 52A was introduced against the Serial No. 199 of the Notification 12/2012-CE where the condition of not availing the cenvat credit of **inputs or capital goods** used in the manufacture of these goods is added with **inputs or capital good or service tax or input services**. Condition no 52A is reproduced below:-

> *'If the said excisable goods are manufactured from inputs or capital goods or by utilising input services on which appropriate duty of excise leviable under the First Schedule to the Excise Tariff Act or additional duty of customs under section 3 of the Customs Tariff Act, 1975 (51 of 1975) or service tax under section 66B of the Finance Act, 1994 (32 of 1994) has been paid and no credit of such excise duty or additional duty of customs on inputs or capital goods or service tax on input services has been taken by the manufacturer of such goods (and not the buyer of such goods), under rule 3 or rule 13 of the CENVAT Credit Rules, 2004.*
>
> *Explanation. For the purposes of this condition appropriate duty or appropriate additional duty or appropriate service tax includes nil duty or nil service tax or concessional duty or concessional service*

tax, whether or not read with any relevant exemption notification for the time being in force'.

11. Learned counsel admits that due to inadvertent mistake on the part of appellant, they failed to note the changes as per Notification No. 06/2017-CE and appellant used to continue with the practice of availing cenvat credit on input services during the period thereafter also. When the above said practice was objected by audit, appellant had reversed proportionate credit on exempted clearances i.e on articles of silver jewellery each quarter and only the net credit was reported in the ER-8 return and utilized the same towards payment of duty. Moreover, the facts regarding total eligible credit less reversal required was reported in the ER-I returns and it is confirmed by Chartered Accountant (CA) vide certification dated 16.09.2023. The details of credit taken in each quarter and reversal under Rule 6(3) of Cenavt Credit Rules 2004 is as under.

Particulars	**2015-16-Q4-Mar'16**	**2016-17-Q1-Apr-Jun'16**	**2016-17-Q2 Jul-Sep'16**	**2016-17-Q3 Oct-Dec16**	**2016-17-Q4 Jan-Mar'17**	**2017-18-Q1 Apr-Jun'17**
Cenvat Credit Taken	4,28,76,565	10,56,62,002	10,66,56,815	10,78,74,389	11,01,53,573	12,69,73,035
Less: Rule 6(3) Reversal	8,94,286	21,00,616	17,81,496	19,99,107	47,32,112	24,46,673
Net Credit Claimed in ER-8 return	**4,19,82,179**	**10,35,61,386**	**10,46,75,320**	**10,58,75,282**	**10,54,21,461**	**12,45,26,362**

12. Ld counsel submits that as per Rule 6(3) of the Cenvat Credit Rules, 2004, the Assessee has the option to select method of reversal and once reversed, it amounts to credit not availed at all. Learned counsel relied on the following decisions:-

1. CCEx. Vs.. Bombay Dyeing & Mfg. Co. Ltd., 2007 (215) ELT 3 (SC).

2. Chandrapur Magnet Wires (P) Ltd., Vs.. CCE, Nagpur, 1996 (81) E.L.T. 3 (S.C.).

3. Hello Minerals Water Pvt. Ltd., Vs. Union of India, 2004 (174) E.L.T. 422 (All.)

4. Franco Italian Co. Pvt Ltd., Vs. Commissioner, 2000 (120) E.L.T 792 (Tribunal-LB)

5. Tiara Advertising Vs. UOI, 2019 (30) G.S.T.L. 474 (Telangana)

6. Agrawal Metal Works Pvt. Ltd., Vs. Commr. of CGST, Alwar, 2022 (65) G.S.T.L. 372 (Tri. – Del.)

7. Hamdard (Wakf) Laboratories Vs. Commr., Cus., C. Ex. S.T., Ghaziabad, (2023) 4 Centax 62 (Tri.-All.)

8. Rohan Motors Ltd. Vs. Commr. of Customs, C. Ex. & S.T., Noida, 2024-VIL-301-CESTAT-ALH-ST

9. M/s Mercedes Benz India (P) Ltd. Vs. Commissioner of Central Excise, Pune -1, 2015 (40) STR 381 CESTAT-Mum

10. Satyakala Agro Oil Products Ltd., Vs. CCE, Guntur, 2008 (223) ELT 441 (Tri Bang)

11. CCE, Ahmadabad-II Vs. Maize Products, 2009 (234) ELT 431 (Guj)

12. Mafatlal Industries Ltd Vs. Commr of Cex & ST, Ahmedabad, 2020 (43) GSTL 562

13. Alstom T&D India Ltd Vs. Commr GST & C.Ex, Chennai, 2019 (370) ELT 625 (Tri-Che)

14. Aster Pvt. Ltd., Vs. Commr of Cus and C & Ex Hyderabad, 2016 (43) STR 411

15. VLCC Health care Ltd., Vs. Commr of GST & Cex, Chennai South, 2019 (27) GSTL 357

16. Mangalore Chemicals and Fertilizers Ltd., Vs. Deputy Commissioner, 1991 (55) E.L.T. 437 (SC)

17. KEI Industries Ltd., Vs. CCE Jaipur, 2008 (223) ELT 249

18. Rama Spinners (P) Ltd., Vs. CCE Hyd, 2007 (220) ELT 330

19. CCE Vs. Amara Raja Power Systems (p) Ltd, 2006 (201) ELT 599

13. As regarding the admission made by Shri. T.K Sitaraman, Executive Director relied upon by the Adjudication Authority, Ld. Counsel submits that he had agreed that condition No. 52A in the case of sale of gold coin was not fulfilled. As he was not aware of Rule 6(3D) of Cenavt Credit Rules 2004, he agreed to pay the differential duty on clearances of gold coins during the period from September 2016 to July 2017 and paid the duty amount of Rs,34,31,019/- with interest of Rs. 10,57,379/- and 15% penalty Rs. 5,14,652/- as advised by the investigating officers. The said statement was not related to articles of silver jewellery and cannot be considered for classifying the articles of silver jewellery.

14. As regards the demand of duty of Rs. 2,20,35,367/- on export of articles of jewellery/articles of silver, Ld. Counsel for the Appellant submits that the Appellant has followed all the provisions of Notification issued under Rule 19 of Central Excise Rules, 2002. In this regard, Ld. Counsel draws our attention to the reply submitted by them and the details of the export during the relevant period as follows:-

Year	**Period**	**Export Sales Value**	**Duty @ 12.5%**
2015-16	March'16	2,09,34,327	26,16,791
2016-17	Apr-Jun'16	6,23,92,699	77,99,087
	jUl-Sep'16	7,36,259	92,032
	Oct-Dec'16	4,28,69,927	53,58,741
	Jan-Mar'16	2,20,14,862	27,51,858
2016-17	**Total**	**12,80,13,747**	**1,60,01,718**
2017-18	Apr-Jun'17	2,73,34,866	34,16,858
Total		**17,62,82,940**	**2,20,35,368**

15**.** Learned Counsel for the Appellant further draws our attention to the following details of export as submitted in reply to Show Cause Notice (SCN):

Invoice No.	Date	Value	Shipping Bill No.	Shipping Bill Date	Airway Bill NO.	Airway Bill Date
KJ/30	11/03/2016	9,777,696	6424189	14/03/2016	176-20177555	14/03/2016
KJ/31	15/03/2016	11,156,646	6479986	16/03/2016	176-20177485	16/03/2016
	Mar'16 Total	**20,934,342**				
KJ/32	11/06/2016	62,392,698	8218709	13/06/2016	176-61642464	13/06/2016
KJ/33	04/08/2016	736,259	9275210	05/08/2016	176-63993274	05/08/206
KJ/34	07/11/2016	42,869,925	2092940	07/11/2016	176-33652894	08/11/2016
KJ/35	19/01/2017	22,014,861	3570267	20/01/2017	176-33664304	20/01/2017
	2016-17 Total	128,013,743				

16. The Ld Counsel further submits that the finding given by the Adjudication authority on this aspect is contradictory. As per paragraph 74 of the impugned order, it is held that:-

> "74. Verification of the assessee's sales turnover for the period under investigation revealed that they had manufactured articles of Jewellery/ articles of silver, falling under CETH 7113/7114, valued at Rs.2,09,34,327/- during 2015-16 (March), Rs. 12,80,13,747/- during 2016-17 and Rs.2,73,34,866/- during 2017-18 (up to June) and shown as exports in their financial

statements without following proper procedures prescribed under the central excise law.

17. Whereas in paragraph 75 of the impugned order, it is stated that the Appellant failed to produce copy of relevant documents to substantiate their claim regarding export and based on that it is held that; "in the absence of any documentary evidence, I reject their claim that the goods were actually exported". The Ld. Counsel submits that the Appellant had exported the goods with documents and entire documents were made available to the investigation officer. As regarding bank realization certificate, the Directorate General of Foreign Trade had issued statement of Bank realization against each shipping bills and copies of the same are produced as part of the memorandum of the appeal. Ld. Counsel submits that substantial benefit must not be denied on technical/procedural grounds. To support the some same learned counsel also relied on following decisions:-

1. ABI Technologies Vs. Assistant Commissioner, 2022 (65) GSTL 30 (Mad.)

2. Heritage Lifestyles and Developers Pvt. Ltd. Vs. Uol, 2020 (43) GSTL 33 Bom

3. Banerji Memorial Club Vs. Dy. Commr., 2020 (33) GSTL 19 (Ker.)

4. Oriental Carbon & Chemicals Ltd. Vs. Uol, 2021 (377) ELT 850 (Guj.)

5. Decorpac Vs. CCEx, 2021 (376) ELT 759 (Tri-Del.)

18. Ld. Counsel for the Appellant further submits that on introduction of excise duty for the first time on the Articles of Jewellery in March 2016, there were lot of confusion and doubts in the minds of the trade and Industry. The Government constituted a Sub-Committee of the High Level Committee (HLC) to simplify the Tax laws and relaxations in implementation of the proposed duty. This committee was formed to interact with Trade & Industry and look into the issues related to compliance procedures for the excise duty on articles of jewellery and to submit its report within 60 days. The Board vide Circular No. 1021/9/2016-CX dated 21.03 2016 communicated this to the trade and it was clarified that till the recommendation of the sub-committee is finalized, simplified procedures for paying duty and export of the goods

can be followed. After receipt of the report from the committee, Government issued various Notifications and Circulars i.e Notification No 26/2016-Central Excise to 29/2016-Central Excise and Notification No. 33/2016-Central Excise (N.T.) to 40/2016-Central Excise (N.T.) and Circular No. 1040/28/2016-CX to No.1045/33/2016-CX to give effect to such accepted recommendations. Though duty was levied with effect from 01.03.2016, the Government prescribed the procedure for registration itself by Notification No. 38/2016-CE (NT) dated 26.7.20216. Likewise, ER-8 return was notified vide Notification No. 37/2016-CE (NT) dated 26.07.2016. The Government again vide Circular No. 1042/30/2016-CX., dated 26-7-2016 has clarified that Exporters may continue to export articles of jewellery, as provided by the Circular No. 1021/9/2016-CX, dated 21-3-2016, on self-declaration and submission of Letter of Undertaking [LUT] to customs without the need to get such LUT ratified by the jurisdictional Central Excise authorities, till the detailed procedures in this regard are put in place. This clearly shows that the of intention Government is to help the industry, as duty was levied for the first time. This is the reason why Government had prescribed special procedure for registration, valuation, maintenance of stock, filing of returns, computation of SSI exemption limit, job work, repair activity. A separate Rule, Articles of Jewellery (Collection of Duty) Rules, 2016 was notified for rate of duty, assessment, manner of payment including an optional scheme for payment of Excise duty, stock position, job-work, dead stock, removal of semi-manufactured jewellery, etc., exclusively for appellant's industry. Hence it clear that the normal procedures prescribed for other goods do not apply to articles of jewellery. Thus, the above said finding that the Appellant has failed to produce copies of the relevant documents is factually incorrect and the demand of Rs. 2,20,35,367/- on export of articles of jewellery/articles of silver is unsustainable. Learned counsel further submits that even if the appellant had paid central excise duty in respect of the goods exported by the appellant, appellant would have been eligible for refund and it will amount to revenue neutrality. On that ground also, the demand is unsustainable. Learned counsel relied on the following decisions:-

1. ***Commr. of C. Ex. & Cus. (Appeals), Ahmedabad Vs. Narayan Polyplasts, 2005 (179) E.L.T. 20 (S.C.)***

2. ***Commissioner of C. Ex. & Cus., Vadodara Vs. Narmada Chematur Pharmaceuticals Ltd., 2005 (179) E.L.T. 276 (S.C.)***

3. ***Commissioner of C. Ex., Pune Vs. Coca-Cola India Pvt. Ltd., 2007 (213) E.L.T. 490 (S.C.)***

4. ***Commr. of C. Ex. & Cus., Vadodara-II Vs. Indeos ABS Limited, 2010 (254) E.L.T. 628 (Guj.)***

19. As regarding the third issue of demand under rule 6(3) of Cenvat Credit Rules 2004 by considering the reverse credit on virtual trading in commodities market popularly known as Hedging, Learned counsel submits that the Adjudication authority considered Hedging activities carried out by the Appellant as trading and by invoking Section 66 of the Service Tax, it is considered as exempted service to confirm the above demand. Based on that, Adjudication authority finds that on verification of Cenvat credit details of the assesse, appellant had availed and utilized Cenvat credit of input services for manufacturing dutiable goods and for providing taxable services and exempted services. In this regard, Ld. counsel submits that in order to protect the risk of price fluctuations of the stock of goods, Appellant had entered into an agreement to hedge its gold inventory and it cannot be considered as trading. Learned Counsel draws our attention to the judgment of the Hon'ble Supreme Court in the matter of **Sales Tax Officer Pilibhit Vs. Bhudh Jayaprakash (1954 (1) SCC 892),** wherein the Hon'ble Apex Court considered the distinction between sale and the agreement to sell and held that a liability to be assessed to sales tax can arise only if there is a completed sale under which price is paid or is payable and not when there is only an agreement to sell, which can only result in a claim for damages. It would be contrary to all principles to hold that damages for breach of contract are liable to be assessed to sales tax on the ground that they are in the same position as sale price. In appellant's case, demand under Rule 6(3) of Cenvat Credit Rules 2004 is confirmed only on the ground that the appellant had entered into hedging and considering it as trading of goods, an exempted service and there by it is held that appellant failed to exercise the option under sub-rule (3) of Rule 6 of CENVAT Credit Rules, 2004 and not complied with Rule 6(3A)

of CENVAT Credit Rules 2004, appellant is liable to pay an amount equal to seven percent of value of the exempted services subject to the maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period as per Rule 6(3)(i) of Cenvat Credit Rules 2004. Appellant has not carried out any speculative business operations i.e. Hedging operations for earning income and the said activity is carried out only to safeguard the financial interest of the appellant against the price fluctuations. It is part and parcel of appellant's manufacturing activity only. As regarding Hedging, the appellant had entered into only forward contracts for sale of gold with State Bank of India (SBI) under Hedging Activity. Hedging is a risk management strategy employed to offset losses in investment, which is meant to reduce a potential loss. As per the Cambridge Dictionary Hedging means "A way of controlling or limiting a loss or risk". There is no sale of gold with the bank based on forward selling contract has part of Hedging. Thus there is no trading involved in Hedging. The learned counsel also submits that SBI also charges service tax on appellant for booking of forward contract. Therefore, there is no question of treating Hedging activity as exempted activity and there is no question of reversal of cenvat credit. Moreover, inputs services in respect of which the credit is held to be ineligible viz., advertisement, security agency service, courier service, renting of immovable property, logistics, management consultancy charges, insurance, annual maintenance contract charges, telephone and internet charges are nowhere related to Hedging Activity. Thus, the question of reversal arises only if such services used are also used in carry out Hedging. Such credit cannot be computed with reference to the entire cenvat credit availed during the period.

20. As regarding alleged ineligible credit in respect of renting of motor vehicle, the Ld. Counsel submits that the issue was considered and covered by the earlier demand and demand was dropped by the Adjudication authority. The Ld. Counsel draws our attention to paragraph 8 of the reply to show cause notice, where they have specifically submitted that SCN No.01/2021 CE dated 18.02.2021 is issued earlier proposing rejection of CENVAT credit availed by the

Appellant. Learned counsel for the appellant further draws our attention to Order dated 18.07.2024 issued by Appellate authority dropping the demand. Facts being so, the said demand is also unsustainable.

21. As regarding penalty, appellant had mentioned the facts and figures in their books of account and it is submitted when the appellant disclosed the said details in the financials, thus in the absence of any fraud, collusion etc., with an intention to evade duty, no penalty can be imposed. The learned counsel also relies on the judgment of **Hon'ble High Court of Kerala in matter of CC Vs. Cochin Minerals and Rutiles Ltd., reported in 2010 (259) ELT (182) Kerala,** wherein it is held that when there is no scope as to whether duty was payable or not, penalty cannot be imposed under the provisions of the Act. Learned counsel relied on the following decisions also in this regard:-

1. Tamil Nadu Housing Board Vs. CCE, Madras, 1994 (74) ELT 9 (SC)

2. Hindustan Steel Ltd., Vs. The State of Orissa, 1978 (2) E.L.T. (J 159) (S.C.)

3. Commissioner of Customs Vs. Cochin Minerals & Rutiles Limited, 2010 (259) ELT 182 (Ker.)

22. The Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order and submits that the Appellant were manufacturing excisable goods falling under CETH 7114 and without payment of duty, they were sold. Further, even while recording the statement, the Executive Director of the Appellant had admitted that goods manufactured by the Appellant are classifiable under CETH 7114 and they had classified such jewelry including gold coin under CETH 7113. He had also admitted that they have not fulfilled the condition No. 52A of the Notification No. 12/2012-CE dated 17.03.2012 amended by Notfication No. 06/2017-CE dated 02.02.2017. As regarding the reliance of the decision of Hon'ble Supreme Court, the Ld. AR submits that it is regarding sale tax and interpretation given by the Hon'ble Apex Court is not applicable in the present case. As regards Chartered Accountant (CA) certificate dated 16.09.2003, though it is produced as part of appeal memorandum, it is produced only after issuing the impugned order. Thus, entire demand is sustainable with interest and penalty has held by Adjudication Authority.

23. The learned AR further submitted that; misclassification of goods under Chapter 7114 as 7113 is an accepted fact and the Appellant has already paid certain amounts in respect of Gold coins sold; similarly Silver ware for house hold use and religious use is a major portion of their sale of Silver article and summarily claiming them as Silver jewellery without providing proper evidences is not acceptable and categorical finding has been recorded by the adjuciating Authority; further in respect of Articles of silver condition is specified in Sl.no 52A and the same prohibits availment of CENVAT credit on input services. and the same is not contended anywhere in the Appeal memorandum; the claim that only net credit has been availed in their ER-8 returns is only a bald assertion and evidence to the effect has been provided during the Adjudication proceedings and the same has been clearly recorded in the Order-in-Original; in the absence of the evidence that they were eligible for higher amount of credit and they have curtailed the credit due to the condition specified in the exemption is only an afterthought and cannot be accepted; The Original Adjuciating Authority has not travelled beyond the SCN as the very issue to be decided was whether the Appellant was eligible for exemption under Notification No. 12/2012-CE and under the same chapter heading 7113 there are three sub-categories and it was the duty of the Original Adjuciating Authority to determine the eligibility under all the two sub-categories.; one of the sub-categories is other than studded silver jewellery and the Commissioner has rightly given his findings on the same (Para 70 of the OIO); the Appellant has produced only sample invoices and has ensured only Invoices which did not involve studded jewellery has been produced in the Appeal memorandum; however, Appellant has not denied that they have cleared studded silver jewellery during the proceedings; the only claim made is that the quantity and value of such clearances has not been separately quantified, this cannot be a ground for summarily dismissing the demand as the onus is on the appellant to prove the quantum of plain silver jewellery as they are claiming the exemption; even if they agree that it was studded jewellery they are eligible for 1% duty cannot be accepted in as much as the condition specified in the notification has not been fulfilled; there was a categorical finding in the Order-in-Original that the Appellant has not

produced any documentary evidence in respect of the claim of exports at the time of the proceedings; hedging is only a term used for covering their risk of fluctuation and does not mean that Trading has not been done; the trading of goods done is real and there is nothing in law differentiating 'Trading' done for the purpose of 'Hedging' or for any other reason hence the inclusion of such trading for calculation of the amount to be reversed is in order. If there was duplication of demand the same should have been demonstrated before the Adjudicating authority as clearly indicated in the Order-in-Original. It is a settled law by catena of decisions by the Honble SC that the exemption notification has to be construed strictly and if the conditions of the notification are not fulfilled they would not be eligible for the said exemption. The following case laws to be considered.

i. Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company & Ors.-2018 (7) TMI 1826-Supreme Court
ii. M/s. Star Industries Vs. Commissioner of Customs (Imports), Raigad -2015 (10) TMI 1288-Supreme Court
iii. Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar Vs. Commissioner of Central Excise And Service Tax, Alwar 2022 (2) TMI 1113-Supreme Court

24. The Ld. Counsel in rejoinder fairly admits that though the Chartered Accountant (CA) certificate was produced by the Appellant after issue of the impugned order, it is reflecting the details furnished in reply to show cause notice and the records are available for verification. The Ld. Counsel further submits that the entire demand is unsustainable.

25. Heard both sides and perused the documents and Notifications, Circulars and Rules relied upon by both the parties.

26. As regards limitation since the demand is made for the period from 01.03.2016 to 30.06.2017 and Show Cause Notice (SCN) was issued on 03.01.2021, the issue regarding invoking the extended period of limitation is well settled as per the judgment of the Hon’ble Supreme Court in the matter of **Continental Foundation Jt. Venture Vs.**

Commr. Of C. Ex., Chandigarh-I reported in 2007 (216) E.L.T. 177 (S.C.), wherein it is held that:-

> ***"9.*** *We are not really concerned with the other issues as according to us on the challenge to the extended period of limitation ground alone the appellants are bound to succeed. Section 11A of the Act postulates suppression and, therefore, involves in essence mens rea.*
>
> ***10.*** *The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.*
>
> *12. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful."*

27. Similarly, in the case of **Densons Pultretaknik Vs. Commissioner of Central Excise** reported in **2003 (155) E.L.T. 211 (S.C.)** it is held that:-

> ***"7.*** *Next question is-whether the Tribunal was justified in invoking first proviso to sub-section (1) of Section 11A. Prima facie, it is apparent that there was no justifiable reason for invoking larger period of limitation. There is no suppression on the part of the appellant-firm in mentioning the goods manufactured by it. The appellant claimed it on the ground that the goods manufactured by it were other articles of plastic. For the insulating fittings manufactured by it, the tariff entry was correctly stated. The concerned officers of the Department, as noted above, after verification approved the said classification list. This Court has repeatedly held that for invoking extended period of limitation under the said provision duty should not have been paid, short-levied or short-paid by suppression of fact or in contravention of any provision or rules but there should be wilful suppression. [Re : M/s. Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore, C.A. No. 2693 of 2000 etc. decided on 13-1-2003]. By merely claiming it under heading 3926.90 it cannot be said that there was any wilful misstatement or suppression of fact. Hence, there was no justifiable ground for the Tribunal for invoking the first proviso to sub-section (1) of Section 11A of the Act."*

28. We find that special procedure for registration, valuation, maintenance of stock, filing of returns, computation of SSI exemption limit, job work, repair activity has been prescribed, and separate Rules, Articles of Jewellery (Collection of Duty) Rules, 2016 were notified for rate of duty, assessment, manner of payment including an optional scheme for payment of excise duty, stock position, job-work, dead stock, removal of semi-manufactured jewellery. etc., exclusively for appellant industry. Hence it clear that the normal procedures prescribed for other goods doesn't apply to articles of jewellery. The dispute in the present appeal is regarding classification of the goods and appellant was filing ER-8 returns from time to time. Moreover the Appellant has not collected the excise duty from the customers on sale of the goods. All

the transactions are duly accounted in the books of accounts and the same were audited by the Central Excise Audit team from time to time. Considering the Judgment of the Hon'ble Supreme Court in the matter of **Continental Foundation Jt. Venture (supra) and Densons Pultretaknik (supra),** in the absence of any mis-statement or willful suppression of facts or contravention of any of the provisions of law with intent to evade payment of duty, there was no justifiable reason for invoking the extended period of limitation.

29. As regarding issue on merit related to classification of the goods and demand of duty, we find that regarding sale of studded silver jewellery, though the entire sale details are available during investigation, there is no invoice relied in the Show Cause Notice to allege sale of studdded silver jewellery. However, we find that the Adjudication authority has classified goods under CETH 7114 on the ground that assessee failed to produce any valid documents to prove that they had infact manufactured and removed this quantity of articles of silver and gold jewelry. It is further held that the assessee has not produced their ledger accounts pertaining to sale of articles of silver jewelry and other articles of silver and it is concluded that "it is evident that assesseee has not manufactured any articles of silver jewelry other than those studded with Diamond, Ruby, Emerald or Safire during the impugned period, as they failed to produce the details of the articles of silver jewelry, articles of silver manufactured and removed by them other than the silver jewelery studded with Diamond, Ruby, Emerald or Safire during the impugned period." We find that the above said finding is factually incorrect and unsustainable. Central Excise Tariff Heading 7114 relates to Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal, of precious metal. The assessee is a reputed manufacture of such products and maintaining records over a period of time. As per the documents produced by the Appellant including the ER returns and the invoices, it is evident that when such goods are sold, the presence of precious stones is specifically mentioned in the invoices. Even as per the calculation made by the Adjudication authority, it is admitted that the Appellant were selling articles of silver jewelry and other articles of silver @ Rs.56 per gram at the relevant time and based on that turn

over is assessed. There is no evidence to show that such goods are studded with Diamond, Ruby, Emerald or Safire. Facts being so, we find that the goods manufactured by the appellant can be classifiable under CETH 7113 as declared by the appellant since there is no admissible evidence to prove that the impugned goods are studded with diamond, ruby, emerald or sapphire. Once the goods are held as classifiable under 7113, next issue is regarding sub classification whether the goods are falling under the category (I), (II) or (III) of 7113 as per Notification No. 26/2016-CE dated 26.07.2016. The appellant had claimed that the goods are falling under the category-(III) since the goods are other not studded with diamond, ruby, emerald and sapphire and the applicable tariff rate was 'nil' if the appellant complied with condition No. 16. Further, as per the condition No. 16, appellant has not availed Cenvat credit on inputs or capital goods used in the manufacturing of these goods. Thus, appellant is entitled for claiming exemption of duty till 02.02.2017. Thereafter, as per the Notification No. 6/2017 dated 02.02.2017, condition No. 52A was introduced against the serial No. 199 of the Notification 12/2012, where the condition of not availing the cenvat credit of inputs or capital goods used in the manufacture of these goods is added with inputs or capital good or service tax on input services. Thus, appellant complied with condition No. 52A also since they have not availed cenvat credit of inputs or capital goods used in the manufacture of these goods and by reversing cenvat credit availed against service tax on input services used in the manufacture of these goods. Accordingly, they are entitled for claiming the benefit of 'nil' rate of duty for the period even after 02.02.2017 to 30.07.2017 as confirmed the impugned order.

30. As regards Hedging, the appellant had entered into only forward contracts for sale of gold with SBI under Hedging Activity. Hedging is a risk management strategy employed to offset losses in investment which is meant to reduce a potential loss. As per the Cambridge Dictionary Hedging means “A way of controlling or limiting a loss or risk”. There is no sale of gold with the bank based on forward selling contract has part of Hedging, thus there is no trading involved in Hedging. Moreover, SBI charges service tax for booking of forward contract, service tax is charged and collected from the appellant. We

also find that inputs services in respect of which the credit is held to be ineligible viz., advertisement, security agency service, courier service, renting of immovable property, logistics, management consultancy charges, insurance, annual maintenance contract charges, telephone and internet charges are nowhere related to Hedging Activity. Thus, the question of reversal arises only if such services are also used for carrying out Hedging, therefore such credit cannot be computed with reference to the entire cenvat credit availed during the period. Thus, following the ratio of the judgment of the Hon'ble Supreme Court in the matter of **Sales Tax Officer, Pilibhit (supra)** and considering the facts and circumstances of the case including payment of service tax through SBI while Hedging activities are carried out by the Appellant, Hedging cannot be considered as trading. Thus, demand of Rs. 55,23,98,187/- under Section 11A (10) of the Act confirmed under Rule 6 (3) of the Cenvat Credit Rules, 2004 is also unsustainable since the appellant has complied with condition No. 52A by reversing the cenvat credit availed against service tax.

31. As regards alleged ineligible credit in respect of renting of motor vehicle, as evident from Show cause notice (SCN) No.01/2021-CE dated 18.02.2021 and Order dated 18.07.2024, the said demand is considered and dropped by Commissioner (Appeals) in separate proceedings. Facts being so, the said demand is unsustainable.

32. Considering the above findings, demand confirmed by impugned order is unsustainable, hence the impugned order is set aside.

33. In view of the above discussion the Appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 27.03.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar