

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Excise Appeal No.40359 of 2022

(Arising out of Order-in-Original No.34/2022-CE (Commr.) dated 29.03.2022 passed by Commissioner of Central Goods and Service Tax & Central Excise, GST Bhawan No.1, Foulkes Compound, Anaimeedu, Salem 636 001)

M/s.AVR Swarnamahal Jewelry Limited

... Appellant

No.251-A, Omalur Road,
Swarnapuri,
Salem,
Tamil Nadu 636 004.

VERSUS

The Commissioner of CGST & Central Excise

... Respondent

Salem GST Commissionerate,
No.1, Foulks Compound,
Anaimeedu,
Salem 636 001.

APPEARANCE :

Shri Raghavan Ramabadran, Advocate
Ms. P. Sangamithra, Advocate for the Appellant

Shri N. Sathyanarayanan, Authorized Representative for the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

FINAL ORDER No.40702/2024

**DATE OF HEARING : 01.03.2024
DATE OF DECISION :20.06.2024**

Per: Ms. Sulekha Beevi. C.S

Brief facts are that the appellant is engaged in the manufacture and clearance of gold jewellery, diamond studded gold jewellery, silver jewellery (falling under Chapter Sub heading 7113 of the Central Excise Tariff Act, 1985) and gold coins of 916 purity (falling under Chapter Sub heading 7114 of the CETA, 1985). They are registered with the Central Excise Department.

2. The intelligence gathered by the officers of Chennai Zonal Unit indicated that the appellant though charged and collected Central Excise duty from their customers did not discharge entire Central Excise duty to the Government exchequer. It also appeared that the assessable value declared by appellant upto the period 05.12.2016 was much lesser when compared to their turn over for the financial year 2014-15 and thus has discharged less Central Excise Duty. In view of these, investigation was initiated and search proceedings were conducted on 07.02.2017 at their corporate office situated at Swarnapuri Salem and branches at Erode, Bazaar Street, Salem and Dharmapuri.

3. In the course of investigation, it was noted that appellant has totally 12 showrooms out of which 9 are in the State of Tamil Nadu at Swarnapuri Salem, Bazaar Street Salem, Kallukurichi, Mettur, Thiruvanamalai, Hosur, Erode, Dharmapuri, Krishnagiri, and 1 showroom in Pondicherry and 2 showrooms in Bangalore. The appellant did not have their own factory for manufacture of gold jewellery and they get the jewellery manufactured through gold smiths, job workers. Appellants purchase gold bullion which is done by their corporate office, at Salem. The gold bullion so purchased is sent to gold smiths located at various places such as M/s.OM Enterprises, Mumbai, M/s.Siva Prakash, Coimbatore, Shri Kosalam, Salem and other local gold smiths for conversion into gold jewellery. The manufactured gold jewellery is received at the Salem Head office and tagging and bar coding is done. The jewellery are then stock transferred to the various branches. On receipt of the jewellery, these

branches enter the details in the SAP software installed in the computers which are connected online with the Head office in Salem. All sales details made in the branches are captured in the SAP software maintained in the Head office in Salem. The sale of gold jewellery is made at the respective show rooms. Besides selling manufactured jewellery, they were also engaged in purchase and sale of jewellery as a trading activity.

4. On scrutiny of ER-8 returns (quarterly returns) filed by the appellant, it was seen that they have filed ER-8 returns only for the quarter July 2016 to September 2016 and for the quarter October 2016 to December 2016. They had not filed ER-8 returns for the period from March 2016 to June 2016 and from January 2017 to June 2017. Appellant vide letter dt. 24.12.2020 submitted to the department that they have not filed ER-8 returns for the period January 2017 to June 2017 due to technical difficulties. On verification of challans submitted by the appellant, it was noted that the appellant has paid Central Excise duty of Rs.2,50,38,379/- for the period March 2016 to June 2017.

5. Since the appellant had not filed the statutory returns declaring the details of manufacture and value of clearances as well as the Central Excise duty liability, the financial statements in the nature of balance sheet and also sales ledgers were called for and scrutinized.

6. On verification of the sales ledgers, it was seen that appellant is maintaining separate ledgers for sale of manufactured goods under the heading "M" and for traded goods under the heading "T". Apart from that, it was noticed that certain other sales are also recorded which are neither classified as "M" or "T" and for ease of reference the same is referred to by the department as "Blank Tag".

6.1 It was noted that in the summary of sales recorded under "M" tag, there were columns mentioned as "Sale value of Gold ornaments" and also "Sale value of Gold ornaments (Excisable)".

6.2 In the summary of sales recorded for items under "T" tag, there were columns mentioned as "Gold ornaments" and also "Gold

ornaments (Excisable)". Though the appellant had discharged Central Excise duty as per "M" Tag ledger on the figures relating to 'Gold ornaments' (Excisable), but had not paid Central Excise duty against the figures noted as 'Gold ornaments (Excisable)' in the 'T' tag ledger. The Department was of the view that the appellant is liable to pay Excise Duty on the figure Rs.34,14,26,808/- noted as 'Gold Ornaments (Excisable)' under "T" tag (trading ledger).

6.3 Further, on scrutiny of the ledger, which is neither marked as "M" or "T" and is referred as "Blank Tag", the summary of details showed items such as 'Diamond ornaments', 'Gold ornaments' and 'Fine Gold'. Out of the above, 'Fine Gold' is not subject to levy of service tax. The appellant is liable to pay duty on diamond ornaments and gold ornaments not bearing any tag.

6.4 The appellant was manufacturing and clearing 22 carat gold coins with the name "AVRJ" engraved on it. Gold coins are classifiable under Chapter 7114 of the CETA. The Notification No.12/2012-CE dated 17.3.2012 provides for reduced rate of duty and exemption in certain cases. As per Sl.No.200 (I) of the said Notification, "articles of goldsmiths' or 'silversmiths' wares of precious metal or of metal clad with precious metal falling under chapter 7114 of the Central Excise Tariff, bearing a brand name, attracts 1% excise duty subject to fulfilment of condition No.25. The said condition 25 of the notification stipulates that no credit under Rule 3 or Rule 13 of the Cenvat Credit Rules 2004, should be taken by the assessee in respect of inputs or input services used in the manufacture of these goods. The ER-8 returns filed by them showed that the appellants have not availed cenvat credit.

6.5 Sl. No.200 (II) of Notification No.12/2012-CE dt. 17.3.2012, provides exemption only for "Gold coins of purity 99.5% and above and silver coins of purity 99.9% and above bearing a brand name when manufactured from gold or silver respectively on which appropriate duty of Customs or Excise has been paid". In the present case, the appellant has manufactured 22 carat (916 purity) gold coins engraved with their trade name or brand name. Therefore, appellant

is not eligible for the exemption specified under Sl.No.200 (II) of Notification No.22/2012 also. The appellant is therefore liable to pay the differential Central Excise duty @ 1% on the assessable value of gold coins manufactured and cleared by them.

7. Show cause notice dt. 8.3.2021 was issued to appellant raising the above allegations and proposing to demand the differential excise duty along with interest. SCN invoked the extended period and also proposed to impose penalties. After due process of law, the original authority confirmed the demand of Central Excise duty of Rs.4,45,51,319/- being the total Central Excise duty on clearances of articles of gold and 22 carat gold coins inscribing the brand name of the appellant. The demand of interest was also confirmed. Duty of Rs.1,98,09,368/- already paid by the appellant was ordered to be appropriated. The original authority imposed equal penalty under Section 11AC besides imposing penalty of Rs.5000/- under Rule 27 of Central Excise Rules, 2002. Aggrieved by such order, the appellant is now before the Tribunal.

8. The Ld. Counsel Shri Raghavan Ramabadrnan appeared and argued for the appellant. The Ld. Counsel made the following submissions :

8.1 At the outset, it is submitted by the Ld. Counsel that the present dispute is restricted to following goods (**'disputed goods'**):

- Gold jewellery,
- Gold coins, and
- Diamond studded gold jewellery.

8.2 It is pertinent to note that the disputed goods are not manufactured by Appellant themselves but only manufactured by job workers/gold smiths engaged by the Appellant. This fact is not in dispute.

8.3 The Appellant has been carrying on its business since 1928. The gold jewellery was subjected to levy of Excise Duty only w.e.f 1.3.2016, consequent to introduction of Articles of Jewellery

(Collection of Duty) Rules, 2016. Hence the dispute period starts from 1.3.2016. The Appellant is subjected to GST from 1.7.2017. Hence the dispute period ends with 30.06.2017. The issue is therefore not periodical or recurring. The Appellant has paid applicable TNVAT/CST on the entire disputed turnover through their periodical returns.

8.4 It is submitted that in the course of business, the Appellant, in order to differentiate between traded jewellery and manufactured jewellery for Excise purposes, maintains the sales ledger with bifurcation for traded and manufactured jewellery pertaining to the disputed goods. These are maintained as follows:

8.4.1 Sale of jewellery manufactured by the job workers on behalf of the Appellant [M- Tag Sales Ledger] and sale of traded jewellery [T- Tag Sales Ledger].

8.4.2 The Appellant does not remit Excise Duty on goods recorded in T-Tag Ledger as no duty is payable on traded goods.

8.4.3 Further, 22 Carat gold coins are manufactured by them through their job workers with the house marks 'AVR'/'AVRJ' engraved on them. This is done for the purpose of identifying the Appellant as the manufacturer of said gold coins. The gold coins manufactured by the Appellant are eligible for Excise Duty exemption under Sl. No. 192 of Notification No. 12/2012-CE dated 17.03.2012.

8.5 The SCN No. 04/2021 dated 08.03.2021 for the disputed period, has proposed to demand Central Excise Duty of Rs.4,45,51,319/- under Section 11A (4) of the Central Excise Act, 1944 ('the Excise Act') along with interest under Section 11AA and penalty under Section 11AC of the Excise Act ('**disputed amount**'), which was confirmed by the Impugned Order-in-Original dated 29.03.2022.

8.6 The quantification of demand in the Impugned Order is reproduced herein below:

Particulars	Sale value/ Assessable Value	Rate of Duty	Duty Payable
Total sale value as per the sales ledgers (M-Tag & T-Tag)	1247,73,41,164.98		
Exemptions from the above value:			
Less: Opening balance of manufactured stock as furnished by the Appellant	43,05,09,649.00		
Less: Trading purchase value as per the purchase ledgers	706,87,98,513.87		
Total Exempted Value	749,93,08,162.87		
Sale value of disputed goods less exemption	497,80,33,002.11	1%	4,97,80,330.02
Total Assessable value on which Central Excise Duty payable	497,80,33,002.11		4,97,80,330.02
Duty paid by the Appellant before search on 07.02.2017			52,29,011.00
Differential Excise Duty Payable			4,45,51,319.00
Duty paid by the Appellant after search conducted on 07.02.2017			1,98,09,368.00
Central Excise Duty yet to be paid			2,47,41,951.00

8.7 The Appellant disputes the entire demand of Rs. 4,45,51,319/-. Out of the said amount, Rs.76,06,824/- relates to excise duty calculated @ 1% on the gold coins cleared by the Appellant.

Case of the Department.

9. It is case of the Department that Excise Duty has been short-paid for the disputed period due to the following reasons:

- i) That in the Sales Ledgers maintained by the Appellant, the Appellant has recorded sales under the heading 'Gold Ornaments Excisable' in their trading ledger. Therefore, the said sales recorded as 'Gold Ornaments Excisable' are deemed to be manufactured goods.
- ii) That the difference between the value of purchases and sales of the traded goods is huge even after giving room for profit margin. Therefore, the Department concluded that manufactured goods have been included in the trading ledger and for the purpose of arriving at the taxable turnover, the purchase value of traded goods are to be considered.
- iii) Further, it is alleged that some sales in the Sales Ledger did not contain M-Tag or T-Tag. Therefore, the Department has deemed that such blank-tag sales are also sale of manufactured goods.
- iv) With respect to gold coins manufactured by the Appellant, the Department alleges that the said coins bear the brand name of the Appellant and therefore, are not eligible for exemption under Notification No. 12/2012-CE.

10. The Appellant submits that the Impugned Order is incorrect and merits to be set aside on the following grounds:

A. The onus to prove manufacture is on the Department and the same has not been discharged in the instant case. Therefore, the Impugned Order merits to be set aside.

A.1 The Impugned Order has confirmed the demand for short-payment of Excise Duty on the ground that goods of description 'Gold Ornaments Excisable' are mentioned in the Trading Sales Ledger and that some entries in the Ledger were allegedly left blank. Apart from relying on description of goods in the Sales Ledger maintained by the Appellant, the Department has not produced any evidence to prove that the disputed goods have been manufactured by the Appellant.

A.2 In the instant case, the Department has not established the activity of manufacture on transactions recorded in the trading ledger.

A.3 It is a well settled position of law that onus to prove manufacture is on the Department. Reliance in this regard is placed on the following cases:

- (i) *Continental Cement Company v. Union of India - 2014 (309) E.L.T. 411 (All.)*
- (ii) *Super Smelters Limited v. Commissioner of Customs, Central Excise & Service Tax - CESTAT Kolkata*
- (iii) *Prink Steels (P) Ltd. v. Commissioner of Central Excise, Customs & S. Tax, Bhubaneswar-I - 2023 (12) TMI 299 - CESTAT Kolkata*
- (iv) *Commr. of C.Ex, Chandigarh-I v. Markfed Vanaspati & Allied Industries - 2003 (153) E.L.T. 491 (S.C.).*
- (v) *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company & Ors - (2018) 9 SCC 1.*

A.4 It is a well settled principle of evidence that the burden of proof lies on the person asserting a particular fact in terms of Section 103 of the Indian Evidence Act, 1872 and the said burden cannot be shifted on the other party to prove the negative. Reliance in this regard is placed on the decisions of *Thiruvengadam Pillai v. Navaneethammal & Anr. - 2008 (4) SCC 530.*

A.5 The Appellant submits that the Department has failed to discharge the burden of proving that a portion of trading turnover reported in T-Tag Sales Ledger pertains to manufactured goods.

A.6 Without discharging the burden to prove manufacture, the Department has shifted negative onus on the Appellant to prove that they have not manufactured the disputed goods. In this regard, it is submitted that Appellant cannot be asked to prove the negative by placing reliance on the following decisions:

- (i) *Broadways Overseas Ltd. v. Commissioner of C.Ex, Jalandhar - 2018 (363) E.L.T. 307 (Tri. - Chan.)*
- (ii) *K. Harinath Gupta v. Collector of Central Excise, Hyderabad - 1994 (71) E.L.T. 980 (Tribunal)*

A.7 Further, the reasoning adopted by the Department in adopting purchase value of the traded goods for the purpose of determining taxable turnover is also arbitrary and not sustainable as the Impugned Order has neither factored the margin earned by the Appellant nor examined the margin adopted by assesseees in the same line of business. In any case, the percentage of difference between sales value and purchase value (even ignoring the difference in quantity) is only 27%.

A.8 Therefore, the Appellant submits that the Department has not discharged its burden to prove manufacture and has confirmed the demand on mere assumptions and presumptions.

A.9 Without prejudice, the Appellant submits that Excise Duty cannot be levied merely on the basis of description of goods in the Sales Ledger. It is a well settled position of law that nomenclature used by the assessee is not conclusive of the nature of the transaction. In any case, the Appellant submits that the M-Tag Ledgers also contain goods of description 'Gold Ornaments' as well as 'Gold Ornaments - Excisable'. Therefore, if the Department's logic is to be extended to the M-Tag Ledger, then it can be argued that traded goods are included in M-Tag Sales Ledger.

A.10 In light of the above, the Impugned Order merits to be set aside on this ground alone.

B. Without prejudice, the quantification of demand adopted by the Impugned Order *qua* the disputed goods is incorrect.

B.1. The Appellant submits that the quantification of demand adopted in the Impugned Order is incorrect. The total sales for FY 2016-17 as determined by the Department in the Impugned Order is as follows:

Table No. 1

S.No.	Particulars	Amount
Sale of gold jewellery, gold coin, diamond jewellery, bought-out gold ornaments, fine gold and bullion		
1	Sales as per Manufacturing (M-Tag) Ledger	Rs.154,75,66,238
2	Sales as per Trading (T-Tag) Ledger	Rs.765,88,20,087
3	Sales as per Blank Tag Ledger	Rs.351,83,75,883
Total sales as per above Ledgers		Rs.1272,47,62,208
4	Silver sales [not included above]	Rs.70,86,34,054
5	Platinum sales [not included above]	Rs.84,98,856
6	Others [not included above]	Rs.1,13,04,410
Total Sales for FY 2016-17		Rs.1345,31,99,528

B.2. The Appellant submits that their total sales as recorded in their sales ledger for FY 2016-17 is as follows:

Table No.2

S.No.	Particulars	Amount
Sale of gold jewellery, gold coin, diamond jewellery, bought-out gold ornaments, fine gold and bullion		
1	Sales as per Manufacturing (M-Tag) Ledger	Rs.146,03,26,754.52
2	Sales as per Trading (T-Tag) Ledger	Rs.1124,33,00,956.43
Total sales as per above Ledgers		Rs.1270,36,27,710.95
3	Silver sales [not included above]	Rs.70,86,34,054
4	Platinum sales [not included above]	Rs.84,98,856
5	Others [not included above]	Rs.1,13,04,410
Total Sales for FY 2016-17		Rs.1343,20,65,030.95

B.3. At the outset, the Appellant submits that there is no difference as regards the value of sales of silver, platinum and other goods as per the Department and the Appellant.

B.4. The Appellant submits that the value of total sales as per the sales ledger provided in Table No.2 viz. Rs. 1343.20 Crores tallies with the value of sales disclosed in the Audited Financial Statement for FY 2016-17.

B.5. Furthermore, the sales turnover declared by the Appellant in their VAT/CST Returns for FY 2016-17 is also **Rs. 1343.20 Crores**.

B.6. The Impugned Order at para 25.10 alleges that an amount of Rs.177,70,27,590/- pertain to sales recorded without any M Tag or T Tag (referred as 'Blank Tag'). The Appellant submits that there is no such entry which neither has M Tag nor T Tag for the disputed period.

B.7 In any case, at para 25.10 the Impugned Order provides a break-up of this turnover as follows:

S.No.	Item	Sale Value
(i)	Diamond Ornaments	35,24,023
(ii)	Gold Ornaments	19,18,74,455
(iii)	Fine Gold	158,16,29,112
(iv)	Total	177,70,27,590
(v)	Total Value considered for levy of Duty	19,53,98,478

B.8 It is also specifically stated in the said para that only an amount of Rs.19,53,98,478/- is subjected to duty. This is because manufacture of Fine Gold is exempt from levy of Excise Duty under Sl. No. 188 of Notification No. 12/2012 dated 17.03.2012. Thus, as noted in the Impugned Order, the turnover of Rs.158,16,29,112/- relating to sale of Fine Gold cannot be subjected to duty.

B.9 However, while quantifying the duty at para 26.1, the Impugned Order omits to deduct the turnover relating to sale of Fine Gold while arriving at the duty liability. In effect, the Impugned Order erroneously demands duty on sale turnover of Fine Gold also, even after having noted that the same is not liable to Excise Duty. On deducting the turnover relating to Fine Gold the revised demand at best can only be 1% on Rs.19,53,98,478/-.

B.10 In light of the above, the demand confirmed *vide* the Impugned Order is not sustainable and merits to be set aside.

C. The gold coins manufactured by the Appellant are exempt from Excise Duty under Notification No. 12/2012-CE dated 17.03.2012. Hence, the demand to the tune of Rs.76,06,824/- must be set aside.

C.1. The Impugned Order has confirmed the demand of Excise Duty @ 1% on gold coins manufactured by the Appellant under Sl. No 200(I) of the Notification No. 12/2012-CE *inter alia* on the ground that the coins manufactured by the Appellant are branded. The Appellant submits that this finding is incorrect.

C.2. The Appellant submits that goods falling under Chapter 71 i.e., Articles of Goldsmiths' or Silversmiths' wares of precious metal not bearing a brand name is exempted under Sl. No. 192 of the Notification. Articles of Goldsmiths' or Silversmiths' wares of precious metal bearing a brand name are subject to 1% Excise Duty under Sl. No. 200(I) of the Notification No. 12/2012-CE.

C.3. It is submitted that Explanation to Sl. No. 200 of the Notification defines 'brand name' and specifies that an identity put by a jeweler or the job worker, commonly known as 'house mark' shall not be considered as a brand name.

C.4. Therefore, gold coins bearing 'house mark' such as 'AVR/ AVRJ', sold by the Appellant are liable for NIL rate of duty prescribed under Sl. No. 192 of the said Notification.

C.5. The Appellant submits that the issue of whether a mark of identity put by a manufacturer/ job worker, commonly known as a 'house mark' will be considered as a brand name is no longer *res integra* and is settled by the decision the Hon'ble Supreme Court in *Astra Pharmaceuticals (P) Ltd. v. Collector of C.Ex, Chandigarh – 1995 (75) E.L.T. 214 (S.C.)*. In the said case, the Hon'ble Apex Court while distinguishing between a house mark and a brand name/ product mark, held that the initials 'AP' displayed on the medicine is used to identify the manufacturer and is only a house mark and not a brand name.

C.6. Further, the issue is also clarified by *Board Circular F No. B-1/1/2005 dated 04.03.2005* and *Circular F. No. B-1/3/2011-TRU dated 25.03.2011*. The Circulars clarify that for attracting Excise Duty, an article of jewellery must be marketed and sold under a brand name and mere engraving of marks/signs/initials by the job workers would not attract the levy of Excise Duty.

C.7 In light of the above submissions it is submitted that the demand confirmed by the Impugned Order on manufacture and sale of gold coins cannot sustain and requires to be set aside.

11. It is submitted by the counsel that interest and penalty is not leviable in the present case as the demand itself is not sustainable.

12. Ld. Counsel also argued on the ground of limitation. It is submitted that extended period is not invocable in the facts of the present case as there is no positive act of suppression. Further, extended period is not invocable when information is taken from the books and records maintained by the Appellant. The Ld. Counsel prayed that the appeal may be allowed.

13. The Ld.A.R Shri N. Sathyanarayanan appeared and argued for the Department. The statements recorded during the investigation as noted in para-15 of the impugned order was adverted to by the Ld.A.R. It is submitted that the appellant does not have a factory for manufacture of gold jewellery and they buy gold in bullion in bar and rod form and give to gold smiths located at various places such M/s.OM Enterprises, Mumbai, M/s.Siva Prakash, Coimbatore, Shri Kosalam, Salem and other local gold smiths for conversion into gold jewellery. The gold jewellery received from the gold smiths are tagged and inventorised at their corporate office. From their corporate office, the articles are sent to the branches under branch transfer invoices along with JJ Form / E-Sugam. The first sales of the jewellery are effected from these showrooms / branches. It is explained by the learned A.R that the appellant is engaged in selling of manufactured gold and also in trading activity of buying and selling of gold jewellery. On verification of the sales ledgers, it was noted that the appellant was

maintaining separate mark as "M" for sales ledger of manufactured jewellery and "T" tag for traded jewellery. However, there were certain sales recorded which neither had "M" tag nor "T" tag. Further, in "M" tag sales ledger, the appellant had accounted sale of Gold ornaments as well as sale of Gold ornaments (Excisable). The appellant had discharged Central Excise duty on both these items which are manufactured gold jewellery sold by them. In the case of "T tag also, the appellant had accounted figures as "Gold Ornaments" as well as "Gold Ornaments (Excisable)". This shows that gold ornaments (excisable) i.e., manufactured are included in T tag sale ledger. As the appellant has included excisable items under trade ledger, the appellant is liable to discharge Central Excise duty on sales accounted under "T" tag as 'Gold Ornaments (Excisable)' being manufactured jewellery. The demand has been raised on such figures noted under "T" tag as 'Gold Ornaments (Excisable)'.

14. The Ld.A.R argued that the appellant has to pay excise duty on gold coins and is not eligible for any exemption as the gold coins are only of 916 purity and not of 99.9% purity. Further, the gold coins bear the brand name of the appellant. The argument of the appellant that this is only a house mark cannot be accepted. The mark denoted by the appellant on the gold coins cannot be considered to be a mark for identification of the seller and it is actually the brand name used by appellant.

15. As regards the arguments put forward on quantification, the Ld. AR adverted to para 25.7 of the impugned order. The difference between purchase value and sale value is Rs.271,17,50,878.97. This difference is huge and cannot be considered as profit. This huge difference is only because manufactured items have been included in traded items (trade sale ledger) and escaped excise duty. The opening balance of the traded goods was not produced by the appellant. So the department proceeded to quantify the duty adopting the purchase value. It is thus not required to consider the profit margin as the purchase value is taken. The demand raised in the show cause and confirmed by the adjudicating authority is therefore legal and proper.

16. It is submitted by the Ld. A.R that the evasion of duty would not have come to light but for the investigation conducted by the department. The appellant has willfully suppressed the facts with intent to evade payment of duty and therefore the demand raised invoking the extended period is legal and proper. Ld. A.R prayed that the appeal may be dismissed.

17. Heard both sides.

18. The issues that arise for consideration are :

(1) whether the demand of Excise duty alleging :-

(i) that manufactured gold jewellery were included in traded items as reflected in sales ledger marked "T" for which excise duty is payable.

(ii) certain items in the sales ledger did not have any mark indicating M tag or T tag and therefore these items are to be treated as manufactured items for which excise duty is payable.

(iii) gold coins of 22 carat (916 purity) engraved with mark "AVR/AVRJ//A22R" bearing brand name manufactured and sold by appellant are not eligible for exemption and the appellant is liable to pay excise duty on gold coins.

(2) whether the demand of interest and penalties imposed are sustainable or not ?

(3) whether the invocation of extended period is legal and proper.

18.1 The first point to be decided is with regard to the demand of excise duty alleging that certain manufactured jewellery have been included in the sales ledger maintained for traded goods (T-Tag) and thus escaped excise duty. In para 5.3.2 of the SCN, the department has given the details of items which, according to them, are

manufactured by appellant and has been included in the trading ledger for which excise duty has not been paid. The summary of sales recorded for items under Trading (T tag) ledger is as follows :-

(i) Diamond ornaments	: Rs. 24,14,26,362
(ii) Gold Ornaments	: Rs.919,76,96,223
(iii) Gold ornaments(Excisable)	: Rs. 34,14,26,808
(iv) Fine Gold	: Rs. 1,42,20,536
(v) Total	: Rs.979,47,69,929

**(vi) Total value considered
for levy of duty : Rs.978,05,49,393**

18.2 Undisputedly, gold ornaments purchased and sold are not subject to levy of excise duty. Only those gold ornaments which are manufactured and sold attract levy of excise duty. According to the appellant, the "T" tag ledger is maintained giving the details of gold jewellery which are traded by them (purchased and sold by them). In the said ledger, besides a column for value of gold ornaments, there is another column for value of Gold Ornaments (Excisable) which comes to Rs.34,14,26,808/- as given above. According to department when it is shown as 'excisable' these are manufactured items and has been wrongly included by appellant in Trading ledger to avoid payment of excise duty. The Ld. Counsel for appellant has explained that the said column 'gold ornaments (Excisable)' in the trading ledger are not gold ornaments manufactured and sold by them. The appellant is indicating 'M' tag in ledger for sale of manufactured jewellery and only traded items are accounted in T tag ledger. Initially, on the introduction of levy of excise duty on gold jewellery, appellant started to maintain accounts as 'gold ornaments' and 'gold ornaments (Excisable)' so as to differentiate between 'traded' and 'manufactured' items. However, this method was given up and they opted to maintain separate sales indicating 'M' tag and 'T' tag but the column in the ledgers continued. The evidence placed before us in the form of sales ledgers show that appellant is maintaining separate ledgers as 'M' tag and 'T' tag. It is seen that both these ledgers have columns indicating 'gold ornaments'

and 'gold ornaments (Excisable). The sales recorded under the Manufacturing (M Tag) Ledger is as under :

(i) Sale Value of Diamond Ornaments	:	Rs. 6,87,49,747.53
(ii) Sale Value of Gold Ornaments	:	Rs. 75,66,89,020.77
(iii) Sale Value of Gold Ornaments (Excisable):		Rs.167,59,54,526.17
(iv) Total Value as per M tag ledger	:	Rs.250,13,93,294.47
(v) Total value considered for levy of duty		: Rs.250,13,93,294.47

18.3 Thus it is can be seen that although 'M' tag sales ledger is maintained for manufactured jewellery (excisable) alone; this ledger also has separate columns as 'gold ornaments' and gold ornaments (excisable). It is explained by the Ld. Counsel that although M Tag Sales Ledger is for manufactured Gold Ornaments only, the earlier indication used by them as "Excisable" continued. After maintaining separate ledgers as M Tag and T Tag, the said column 'Excisable', does not have any relevance. The whole value under 'M Tag' is subject to levy of excise duty and that the appellant has paid this duty and does not dispute the same. Thus, the explanation given by the appellant is that though their trading sales ledger has separate columns indicating Gold Ornaments and Gold Ornaments (Excisable), the entire Gold Ornaments accounted in the trading ledger are only of traded and not manufactured.

18.4 On examining the Sales ledger of M Tag, we find that the explanation given by the appellant is probable and acceptable. Though M tag ledger is for manufactured items only, in M Tag ledger also, the appellant has separate columns as 'Gold Ornaments (Excisable)'. The Department does not have any quarrel with the separate column 'Gold Ornaments (Excisable)' denoted in the M Tag. The column denoted in T Tag as 'Gold Ornaments (Excisable)' has been alleged to be manufactured Gold Jewellery. It is to be noted that levy of excise duty on manufactured gold jewellery was introduced with effect from 1.3.2016 only. The period involved is from March 2016 to June 2017. The case put forward by the appellant that initially they started ledgers

with different columns for Gold Ornaments and Gold Ornaments (Excisable) and later finding it inconvenient, switched on to maintain separate ledgers for Manufactured Jewellery (by giving indication of M Tag) and Traded Jewellery (by giving indication of T Tag) is more probable taking into consideration that the appellant had to maintain accounts separately for manufactured jewellery in order to file returns and pay excise duty only w.e.f. 1.3.2016.

18.5 The demand of duty cannot be on the basis of how an assessee has accounted impugned items in their sales ledger or other books. The burden rest upon the department to prove that the said quantity of items shown as gold ornaments (Excisable) in T-tag has been manufactured by the appellant. In the present case, the appellant does not have their own factory for manufacture of gold jewellery. They get the jewellery manufactured through goldsmiths, job workers. In para-3 of the impugned order, the department has discussed these details and also noted that the gold bullion purchased by the corporate office of the appellant is sent to goldsmiths located at various places such as M/s.Om Enterprises, Mumbai, M/s.Siva Prakash, Coimbatore, Shri Kosalam, Salem and other local goldsmiths for conversion into gold jewellery. In para-14 of the impugned order, the evidences by way of deposition has been discussed. In page 13 of the impugned order it is noted by the department that the gold jewellery received from the goldsmiths are then tagged (inventorised) at their corporate office. These items are then shipped (transferred) to the branches under branch transfer invoices along with JJ Form / E-Sugam. The first sale of jewellery are effected from the branches. The sales at the showrooms (branches) are made under "SAP Business One" software which is centrally connected to the corporate office. For the purpose of reconciliation, the details of sales made at the showrooms (branches) will be transferred to the corporate office on monthly basis. The procedure adopted by the appellant for manufacture of gold jewellery by job workers and thereafter sales by their showrooms and the accounting of such sale is brought out from the above evidence. If the department alleges that manufactured jewellery has been

accounted in trading ledger (Rs.34,14,26,808/-), then the department has to establish how appellant has manufactured such quantity. There is no evidence put forward to show that there has been any clandestine manufacture of gold jewellery. In other words, there is no evidence to show that there has been suppression with regard to details of gold bullion purchased or jewellery manufactured by the job workers and transferred to the corporate office of the appellant. Unless the department proves that gold bullions required for manufacture of this value of Rs.34,14,26,808/- has been purchased and appellant got it manufactured by job workers, it cannot be established that gold items of Rs.34,14,26,808/- mentioned in T tag sale ledger are manufactured jewellery. In other words, on mere indication of gold jewellery (excisable) in the T-tag, it cannot be concluded that these items are not traded jewellery but manufactured jewellery. More so, when the appellant has given satisfactory explanation as to why the M tag sales ledger as well as T tag sales ledger has columns "Gold Ornaments" as well as "Gold Ornaments (Excisable)". The Ld. Counsel for appellant has relied on several decisions to argue that duty cannot be demanded alleging clandestine manufacture and clearance of goods on assumptions and presumptions. From the above discussions, we are of the view that the demand of Excise Duty on 'Gold Ornaments (Excisable)' of Rs.34,14,26,808/- as mentioned in T-tag ledger cannot sustain and requires to be set aside. The first issue is answered in favour of assessee and against the department.

19. The second point is with regard to the demand of excise duty on items which did not have any M tag or T tag. The appellant has stated that they have not sold any items without indication as "M" or "T". However, the department has been able to find items which are neither marked as "M" or "T". These have been referred to as "Blank Tag". Para-10 of the impugned order discusses the sales details of goods which are neither marked as M nor T. Summary of the table in the said ledger for the period from March 2016 and June 2017 is as under :

“25.10 Further during the time of investigation it was found that the sales ledger showed goods cleared neither marked as ‘M’ nor marked as ‘T’. The following are the Sales which was not marked either ‘M’ or ‘T’

	Item	Sale Value
(i)	Diamond ornaments	35,24,023
(ii)	Gold ornaments	1918,74,455
(iii)	Fine gold	15816,29,112
(iv)	Total	177,70,27,590
(v)	Total value considered for levy of duty :	19,53,98,478

25.11 The assessee has contended that they do not have a sales ledger which does not carry any tag. The assessee vide their letter dated 01.02.2021 had submitted sales ledger for the period from March 2016 to June 2017. Only from that submitted ‘M’ tag sales, ‘T’ tag sales and without any tag sales was segregated by the Investigating Officers and Total Sales was quantified. Now, in their reply to show cause notice they have attached the Sales ledger containing ‘M’ tag sales, ‘T’ tag sales. Sales without any tag has been conveniently not shown. They have also stated that for confirmation of the sales they said to have attached Chartered Accountant Certificate. However, the said certificate has been not attached by the assessee. Therefore, I conclude that the sales without tag works out to Rs.177,70,27,590/-.”

19.1 In the above table, Fine Gold (Rs.1,58,16,29,112) is also seen mentioned. Fine Gold is not subject to duty and has not been considered for quantification of duty. The Ld. Counsel has argued that department has taken the entire value of Rs.177,70,27,590/- for quantification of duty in the impugned order. Although in the last sentence of para 25.11 of the impugned order, it is mentioned that sales without tag works out to be Rs.177,70,27,590/-, it can be seen that in para-26 of the impugned order the quantum of Fine Gold has been excluded for quantification. The total value considered for levy of duty in para-26 as per the Blank Tag Register is Rs.19,53,98,478/. The appellant has not been able to give any plausible explanation as to why some items are without any tag. We therefore find that the appellant is liable to pay duty on the value of Rs.19,53,98,478/-. (Rs.35,24,023 + Rs.19,18,74,455). This issue is found in favour of Revenue and against the assessee.

20. The third point is with regard to demand of duty on sale of gold coins. The appellant manufactures and sells 22 carat gold coins. In para-13 and paras 25.12 to 25.17, the adjudicating authority has discussed the issue with regard to demand of excise duty on gold coins. It is the case of the department that the coins manufactured by appellant are only 91.6% purity and the appellant engraves / affixes a mark as "AVR/AVRJ" on the gold coins; that the mark is brand name of the appellant. The appellant is therefore not eligible for the benefit of Notification No.12/2012-CE dt. 17.3.2012 which provides for exemption or payment of reduced rate of duty. The appellant has countered this allegation by submitting that the mark engraved on the gold coins is not brand name or trade name and is only a 'house mark'. It is also submitted that they do not claim the benefit under Sl.No.200 of the notification and that they are eligible for benefit of exemption under Sl.No.192. The goods falling under Chapter 71 viz. 'Articles of Goldsmith or Silversmith or wares of precious metal clad with precious metal, not bearing a brand name is exempted under Sl.No.192 of the Notification No.12/2012-CE. According to appellant, the gold coins do not bear brand name and the engraving is only a house mark; whereas department contends that it is a brand name. We therefore proceed to examine whether the mark engraved on gold coins is a house mark or a brand name / trade name.

20.1. Gold coins are classified under Chapter 7114 of the CETA, 1985. The description of goods under column 2 reads as under :

"Articles of Goldsmiths' or Silversmiths' Wares and Parts thereof, of precious metal or of metal clad with precious metal."

Sub heading 7114 1910 reads as under :

"Articles of gold; for which the tariff rate of duty is 12.5%"

20.2. The relevant provisions of chargeability of articles of jewellery falling under 7113 of the Schedule to CETA 1985 are as under :

Articles of Jewellery are classifiable under Chapter 7113 of the Central Excise Tariff and the classification as given in the Tariff is reproduced below :

Tariff Item	Description of goods	Unit	Rate of duty
1	2	3	4
7113	ARTICLES OF JEWELLERY AND PARTS THEREOF, OF PRECIOUS METAL OR METAL CLAD WITH PRECIOUS METAL – Of precious metal whether or not plated or clad with precious metal		
7113 11	Of silver, whether or not plated or clad with other precious metal :		
7113 11 10	Jewellery with filigree work	Kg	12.5%
7113 11 20	Jewellery studded with gems	Kg	12.5%
7113 11 30	Other articles of Jewellery	Kg	12.5%
7113 11 90	Parts	Kg	12.5%
7113 19	Of other precious metal, whether or not plated or clad with precious metal		
7113 19 10	Of gold, unstudded	Kg	12.5%
7113 19 20	Of gold, set with pearls	Kg.	12.5%
7113 19 30	Of gold, set with diamonds	Kg.	12.5%
7113 19 40	Of gold, set with other precious and semi-precious stones	Kg.	12.5%
7113 19 50	Of platinum, unstudded	Kg.	12.5%
7113 19 60	Parts	Kg.	12.5%
7113 19 90	Other	Kg.	12.5%
7113 20 00	Of base metal clad with precious metal	Kg.	12.5%

The appellant claims benefit at Sl.No.192 of Notification No.12/2012-CE dt. 17.03.2012. The said Sl.No.192 is noticed below :

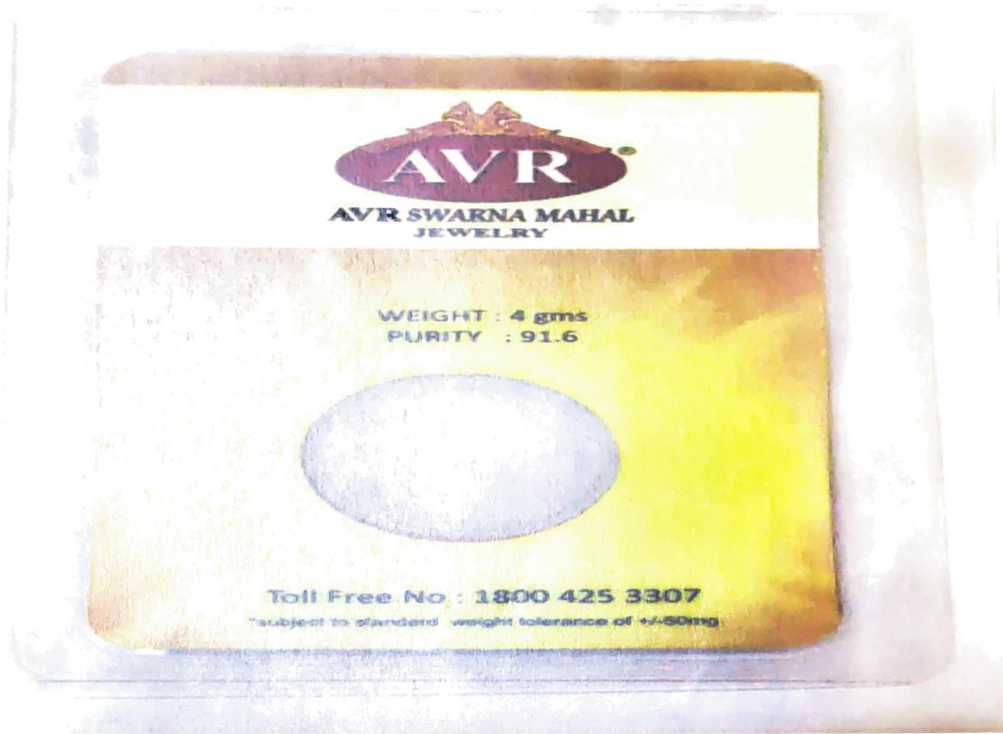
Sl.No.	Chapter or heading or sub-heading or	Description of excisable goods	Rate	Condition No.
192	71	(I) Articles of goldsmiths' or silversmiths' wares of precious metal or of metal clad with precious metal, not bearing a brand name;	Nil	52A

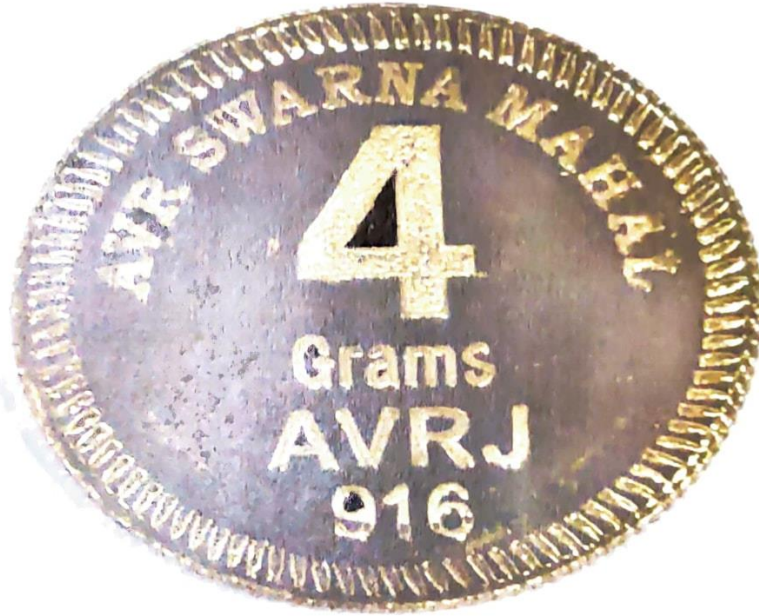
As per the above Sl.192, the exemption is available if the articles do not bear a brand name and also on compliance of condition No.52A. The condition 52A is that the assessee should not avail credit of inputs / input services. Undisputedly, the appellant has not availed any cenvat credit of inputs / input services.

20.3 According to department, the appellant is not eligible for the exemption under Sl.No.192 as the gold coins bear brand name.

20.4 For appreciating the issue better, the marks on gold coins are captured as under :

/ space is left with purpose /







20.5 The name of the appellant is AVR SWARNA MAHAL. The name or the abbreviation of name are seen engraved on the gold coins. The question is whether such a mark is to be considered to be a brand name / trade name. It is common in the field of jewellery manufacture and trade to indicate a mark on the items so as to know the manufacturer / trader of the items. The Board vide Circular No.B-1/1/2005-TRU dt. 4.3.2005 has clarified that such a mark meant for identification is not a brand name. The Board circular is reproduced as under :

/ space is left with purpose /

“Circular: B-1/1/2005-TRU dated 04-Mar-2005**Jewellery – Branded articles of jewellery – Levy of excise duty – Clarifications****F. No. B-1/1/2005-TUR, dated 4-3-2005**

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.

2. In this context, relevant extracts of Finance Minister’s 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 goldsmiths/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.”

20.6 In the impugned order, brand name and trade name are used interchangeably. A house mark is something which is used to describe and identify a company. A brand name, also called as product mark, is used by a company to identify the product. A brand name is more like a title that a company or manufacturer gives to the product. It evokes positive thoughts and sentiments in the customer / client. A brand name is a mixed basket of personality, culture, identity, image, reputation and spirit of a company. It often represents the style, appearance and quality of the product. A brand name helps a company to set apart its products from competing products. Although a 'brand' may have some indication of the company / manufacturer it is used to create image for the product. A house mark, as already stated is used for identity of a company / manufacturer.

20.7 The Ld. A.R appearing for the department has relied on the decision in the case of *Titan Industries Vs CCE Chennai* – 2016 (337) ELT 250 (Tri.-Chennai) to argue that the engraving made by appellant on the gold coin is in the nature of brand name. In the said decision, the issue considered was whether the marks embossed as Q & I would be a brand name. the Tribunal observed that earlier the appellant was using the brand name, **Tanishq** and **Gold Plus** which are admittedly brand names and later switched over to embossing 'Q' & 'I'. The Tribunal observed that these letters did not indicate connection with the manufacturer viz; Titan Industries and therefore is a brand name and not house mark. The said decision is of no assistance to the department.

20.8 In the case of *Astra Pharmaceuticals (P) Ltd. Vs CCE Chandigarh* – 1995 (75) ELT 214 (SC), the Hon'ble Apex Court had occasion to consider the difference between a brand name and house mark. It was held that a mark intended for identifying the manufacturer cannot be considered to be a brand name as is only a house mark. Relevant paras of the said decision are reproduced as under :

“6. As has been explained earlier the first part of the Explanation widens the ambit of the entry by extending it to any drug or medicinal preparation for use in internal or external administration for prevention of ailments in

human beings or animals. But then it narrows it by restricting the applicability of the tariff item to only such medicines which bear either on itself or on its container or both a name which is not specified in a monograph in a Pharmacopoeia. This obviously is not applicable to the appellant as the injections manufactured by the appellant are specified in a Pharmacopoeia. The other class of medicines to which this Explanation applies are those which have a brand name that is a name or a registered trade mark under a Trade & Merchandise Marks Act. The medicine manufactured by the appellants is not registered under the Trade and Merchandise Marks Act. Therefore, it would attract levy only if its container or packing carried any distinctive marks so as to establish the relation between the medicine and the manufacturer. But the identification of a medicine should not be equated with the produce mark. Identification is compulsory under the Drug Rules. Technically, it is known as 'house mark'. In Narayan's Book on *Trade Marks and Passing-Off*, the distinction between 'house mark' and 'product mark' (brand name) is brought out thus,

“677A. House mark and product mark (or brand name).

In the pharmaceutical business a distinction is made between a house mark and a product mark. The former is used on all the products of the manufacturer. It is usually a device in the form of an emblem, word or both. For each product a separate mark known as a product mark or a brand name is used which is invariably a word or a combination of a word and letter or numeral by which the product is identified and asked for. In respect of all products both the product mark and house mark will appear side by side on all the labels, cartons etc. Goods are ordered only by the product mark or brand name. The house mark serves as an emblem of the manufacturer projecting the image of the manufacturer generally."

The 'AP' or 'Astra' on the container or packing was used to project the image of manufacturer generally. It did not establish any relationship between the mark and the medicine. For instance, if the appellant instead of using Dextrose injections would have described it as Astra injections or Astra Dextrose injections then it could be said that a relationship between the monograph and the medicine was established. In the case of appellant it was only a monograph to identify the manufacturer.

7. In *M/s. Indo French Pharmaceutical Co., Madras v. Union of India and Others* - 1978 (2) E.L.T. (J 478) a learned Single Judge of the Madras High Court while construing Tariff Item 14E observed,

“a close reading of the Explanation however in my view indicates that the marks, symbols, monogram, label, signature or other words which are used in the medicinal preparation or its container should be such as to indicate that the medicine is a special preparation made by the manufacturer. The connection between the medicine and the manufacturer contemplated under the Explanation should be such as to indicate that the manufacturer has a proprietary interest in the medicine.”

This was approved by Division Bench of the same High Court in *Union of India v. Indo-French Pharmaceutical Company* - [1983 \(12\) E.L.T. 725](#) (Mad.). Reliance was placed on *Ramsey Pharma Private Ltd. v. Superintendent, Central Excise, Allahabad & Ors.* - [1983 \(12\) E.L.T. 78](#)

(All.) for the Revenue and it was claimed that this decision was followed by the Tribunal and since it was based on correct interpretation of Explanation I the appellant was not entitled to any relief. It would be seen that in the decision rendered by the Allahabad High Court it is not clear if the container bore the name of the medicine as well. What has been extracted in the judgment is that the medicine has been manufactured by M/s. Ramsey Pharma Pvt. Ltd. As stated earlier if the container of the appellant would have stated that these were Astra Dextrose injections then it could be said that a relationship between the medicine and the manufacturer was established. The ratio laid down by the Madras High Court is approved as correctly enunciating the scope of Explanation I. Since the appeal is being allowed on merits the question whether the Revenue was justified in reopening the case under proviso to Section 11A of the Act is rendered academic and is not necessary to be decided.

8. In the result this appeal succeeds and is allowed. The order passed by the Tribunal is set aside and the question of law raised by the appellant is decided by saying that Dextrose injections manufactured by the appellant in the relevant years were not patent and proprietary medicines dutiable under Tariff Item 14E of the Schedule. There shall be no order as to costs.”

20.9. The Larger Bench in the case of *C. Krishnaiah Chetty & Sons Pvt. Ltd. Vs CCE Bangalore - 2020 (2) TMI 1380- CESTAT BANGALORE* considered the issue of house mark and brand name in regard to articles of gold and gold jewellery. The Board Circulars were referred to in the said decision. It was held by the Tribunal that what is to be seen is whether the brand name or trade name which could be a mark used in relation to the product, indicates 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 the person. In other words, if the mark is only for identification of the person, the said mark cannot be treated as a brand name or trade name.

20.10 In the present case, the mark on the gold coins only indicates the manufacturer/ seller of the gold coins. We therefore are of the considered opinion that the mark engraved on the gold coins is only a house mark and not brand name / trade name. The demand of duty alleging that the gold coins bear brand name cannot sustain and requires to be set aside. This issue is found in favour of assessee and against the Revenue.

21. Quantification of duty

The quantification of duty for the disputed period March 2016 to June 2017 is given in para 26 of the impugned order. The table of quantification is reproduced below :

Particulars	Sale value / Assessable Value	Rate of duty	Duty Payable
Total sale value of as per the sales ledgers – M Tag, T-Tag and Blank Tag	1247,73,41,164.98		
Exemptions from the above value:			
Less: Opening Balance of manufactured stock of as furnished by the Noticee	43,05,09,649.00		
Less: Trading purchase value as per the purchase ledgers	706,87,98,513.87		
Total Exempted Value	749,93,08,162.87		
Sale value of disputed products less exemptions	497,80,33,002.11	1%	4,97,80,330.02
Total Assessable value on which central excise duty payable	497,80,33,002.11		4,97,80,330.02
Duty paid by the Noticee before the search conducted on 07/02/2017 / detection of duty evasion			52,29,011.00
Differential central excise duty payable			4,45,51,319.00
Duty paid by the Noticee before the search conducted on 07/02/2017 which is liable for appropriation			1,98,09,368.00
Central excise yet to be paid			2,47,41,951.00

21.1 The total assessable value on which central excise duty is payable is noted in the above table by the department as Rs.497,80,33,002.11. The duty @ 1% payable on the assessable value is taken as Rs.4,97,80,330.02. The duty paid by appellant before search and investigation has been deducted. Thus, the duty confirmed as per impugned order is Rs.4,45,51,319/-.

21.2 The above quantification of duty has been arrived after including the sale value of M tag, T tag, and Blank tag which is as below :

250 1393 294.98 - M tag
 978 0549 393.00 - T tag
 19 5398 478.00 - Blank Tag

1247,7341,164.98

Out of the above, we have held that demand on T-tag cannot sustain. The appellant does not dispute liability to pay duty on M tag. We have held that appellant is liable to pay duty on Blank tag. It is also held

that appellant is not liable to pay duty on sale of gold coins (Sale value of Rs.76,82,89,192/-). There is no dispute as to the quantity of sales of coin accounted and the allegation in SCN on gold coins is only that appellant is not eligible for exemption and has to pay duty.

21.3 The Ld. Counsel for appellant has argued that department has taken the Purchase Value of Trading ledger as 706,87,98,513.87. It is stated in para 25.6 and 25.7 that appellant failed to produce opening balance of the Traded goods and therefore the Purchase Value in the ledger is adopted. The Ld. Counsel for appellant has argued that by adopting Purchase Value as above the appellant has been denied profit margin and therefore the computation is erroneous. The Ld. Counsel for appellant has put forward computation of duty by deducting the sale value (978,0549,392.84). The said computation put forward by appellant is below :

S.No.	Particulars	As per Appellant		As per Department	
		Sale Value / Assessable Value	Duty Payable @ 1%	Sale Value / Assessable Value	Duty Payable @ 1%
1.	Total Sale Value as per the Sales Ledgers – M-Tag, T-Tag, Blank Tag	12,47,73,41,164.98		12,47,73,41,164.98	
	Exemptions from the above:				
2.	Less: Opening Balance of manufactured stock	43,05,09,649.00		43,05,09,649.00	
3.	Less: Trading Sales Value as per the ledger	9,78,05,49,392.392.84		7,06,87,98,513.87	
4.	Less: Coin Sales	76,82,89,192.00		-	
5.	Total Exempted Value (2+3+4)	10,97,93,48,233.84		7,49,93,08,162.87	
6.	Sale value of disputed products less exemption (1-5)	1,49,79,92,932.14	1,49,79,929.31	4,97,80,33,002.11	4,97,80,330.02
7.	Total Assessable Value on which central excise duty payable	1,49,79,92,931.14	1,49,79,929.31	4,97,80,33,002.11	4,97,80,330.02
8.	Duty paid by the Noticee before the search conducted on 07/02/2017		52,29,011.00		52,29,011.00

9.	Differential Central Excise duty payable (7-8)		97,50,918.31		4,45,51,319.02
10.	Duty paid by the Noticee after the search conducted on 07/02/2017		1,98,09,368.00		1,98,09,368.00
11.	Excess Duty Paid (9-10)		-1,00,58,449.69		2,47,41,951.02

21.4 As per the above table, the appellant contends to have paid excess duty of Rs.1,00,58,449.69. The department has arrived at the total duty payable as Rs.4,45,51,319.02 after adopting the Purchase Value shown in the Trading Sales ledger. In para 25.6 it is noted by adjudicating authority that the purchase value of newly bought gold and diamond ornaments are being considered. The purchase value of other items like bought out ornaments, worn out ornaments etc. is not taken into account for giving the deduction. In our view, after adding up the value of M-tag, T-tag, Blank Tag and then giving deduction on purchase value is not proper.

21.5 According to us, the appellant is liable to pay duty on M-tag and Blank tag. The appellant does not dispute M-Tag. In regard to Blank tag, apart from alleging that there has been no account without either indicating M-tag, or T-tag, the appellant has not been able to explain the quantity of sales of 19,5398,478 which is without tag. The appellant has to pay duty on this Blank tag. The assessable value duty for the disputed period as payable on the sale indicated as M Tag & Blank Tag is as below :

250,1393,294.98 - M tag
19,5398,478.00 - Blank tag

269,6792,772.98

21.6 The Central Excise duty payable is as under :

Assessable value - 269,6792,772.98

1% Excise duty payable on the above amount	-	2,69,67,927.72
Duty already paid by assessee	-	2,50,38,379.00
		<hr/>
Balance duty payable		19,29,547.00
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21.7 We therefore hold that for disputed period the appellant has to pay differential central excise duty of Rs.19,29,547/-. It is to be noted that this amount pertains to the Blank Tag.

21.8 The SCN dt. 8.3.2021 is issued for the disputed period March 2016 to June 2017 invoking the extended period. The appellant has paid the admitted liability pertaining to M-Tag in 2017 itself (para 27.1 & 27.2) much before issuance of the SCN. The Ld. Counsel for appellant has submitted that as manufacture of gold jewellery became subject to levy of excise duty w.e.f. 1.3.2016 only, the appellant was facing difficulties to adjust to accounting pattern. Further, in July 2017, the GST regime was introduced and appellant was taking steps for this new tax under GST law. The period is the transition period of introduction of excise duty on gold ornaments and also shifting to GST regime. In para 4 it is noted that vide letter dt. 24.12.2020, the appellant had submitted that they have not filed ER-8 from Jan 2017 to June 2017 due to the technical difficulties. However, it is to be seen that certain items did not bear any tag and duty was not paid which is suppression of facts. The invocation of extended period therefore sustains. The appellant is liable to pay duty in regard to Blank tag along with interest as quantified above. The admitted liability was paid by appellant immediately in 2017 itself on being pointed out by the officers. We are of the view that the penalty under Section 11AC is to be confined to the duty payable under Blank Tag (Rs.19,29,547/-).

22. In view thereof, the impugned order is modified to the extent of confirming the central excise duty to the tune of Rs.19,29,547/- along with interest. The appellant has to pay equal penalty of Rs.19,29,547/- under Section 11AC of Central Excise Act, 1944. The amount already paid by the appellant and appropriated vide impugned order is upheld. The appeal is partly allowed in above terms with consequential reliefs, if any.

(Order pronounced in the open court on 20.06.2024)

sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

sd/-
(SULEKHA BEEVI. C.S)
Member (Judicial)