

MACKENNA'S GOLD

(S. Jaikumar, Advocate, Swamy Associates)

Many criticize this Budget as 1980's budget! To me, it appeals to an extent, as it has literally brought the most (in) famous GOLD CONTROL regime, which reigned in the 1980's!

Branded Articles of jewellery falling under Chapter heading 71 of the Central Excise Tariff Act, were brought to Central Excise levy in the year 2005, with a levy of 1%. This year our FM has expanded it to the unbranded articles of jewellery too, except silver jewellery, which constitutes around 90% of the market.

First lets understand the term " articles of jewellery" under Central Excise.

For the purposes of heading 7113, the expression "articles of jewellery" means:

(a) any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, ear-rings, watch chains, fobs, pendants, tie- pins, cuff-links, dress-studs, religious or other medals and insignia); and

(b) articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes,

cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semi-precious stones, synthetic or reconstructed precious or semi-precious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.”

Now lets get into the relevant portions of the TRU letter dated 16.3.2012:

In para 8.1 of the said letter, it has been clarified that, the excise duty of 1% ad valorem which was hitherto applicable to precious metal jewellery manufactured or sold under a brand name would now apply to both branded and unbranded goods (except silver jewellery) at the same rate of duty of 1%.

In this connection it is relevant to refer to Sl.Nos. 199 & 200 of Notification 12/2012 dated 17.3.12 , which prescribes 1% for the “articles of jewellery” (with or without brand name) and the “articles of goldsmiths’ or silversmiths’ wares of precious metal or of metal clad with precious metal, bearing a brand name” (except gold coins and silver coins having purity of 99.5% & 99.9% respectively manufactured out of gold or silver, upon which appropriate Customs or Excise duty has been paid), with a condition that NO CENVAT credit is availed on

“inputs” or “input services” has been availed. It is pertinent to mention that there is no bar to avail CENVAT credit on the “Capital Goods”. Further, as per Notification 20/2012 dated 19.3.2012, the optional 6% has been given for the above with the CENVAT credit facility.

Now to the salient features of this levy:

For this levy, excise duty would be charged based on “tariff value” which is being prescribed under section 3 of the Central Excise Act, which would be equal to 30% of the “transaction value” declared on the invoice and transaction value shall have the same meaning as assigned to it under section 4 of the Central Excise Act. (Ref: Notification 9/2012 – CE NT dated 17.3.2012).

In this connection, it is relevant to mention that, where a retail customer gets an article of jewellery made by providing precious metal or old jewellery to the jeweler and if the jewellery is made from such precious metal or such old jewellery provided by the retail customer, then the above abatement of 70% on the “transaction value” is not available to such transactions. In other words, if you approach the jeweler to make a jewel for a lakh of rupees and you provide gold worth of 75000 or old jewellery worth of 75000 and the new jewellery is made out of such gold or old jewellery given by you, then the excise duty @ 1% is payable on the balance 25000 given as cash by you and the benefit of the above Notification is not available

for such transaction, as per the proviso to the said Notification.

It is also a common practice that, even though a retail customer gives gold or old jewellery "IN EXCHANGE" for a new jewellery, the new jewellery may not be made out of such gold or old jewellery given by the retail customer and it may form part of two new transactions, namely, one sale of gold/old jewellery by the retail customer to the jeweler and secondly, the sale of new jewellery by the jeweler to the retail customer.

In this circumstance, the bar in proviso to the said Notification shall not apply to such transactions as the new jewellery is NOT MADE OUT OF THE GOLD/OLD JEWELLERY PROVIDED BY THE CUSTOMER.

In such cases, the "transaction value" as per Section 4 of the Central Excise Act would come into play and the consideration for such gold/old jewellery would be treated as " extra consideration" under Rule 6 of the Valuation Rules and shall get added to the "tariff value!!!"

The benefit of SSI exemption would be available to manufacturers of precious metal jewellery and the aggregate value of clearances (both for the purpose of eligibility and exemption) would be computed on the basis of "tariff value." Suitable provisions have been incorporated in the SSI notification no.8/2003-CE dated

1st March, 2003 so that for the purpose of determining eligibility of a manufacturer/ factory for SSI exemption for the year 2012-13, the computation of aggregate value of clearances of Rs. 4 crore for the year 2011-12 is made on the basis of the tariff value i.e. taking 30% of the transaction value and not full transaction value.

It may also be noted that, the exemption limit for the remaining part of 2011-12 i.e. between 17th March, 2012 and 31st March, 2012 **is not being curtailed** for manufacturers of unbranded jewellery who would come into the tax net afresh. In other words, eligible manufacturers/factories would be entitled to exemption for the full threshold limit of Rs. 1.50 crore for this period. For manufacturers who are already availing of the SSI exemption during 2011-12 also the computation of the exemption limit would have to be made on the basis of tariff value of clearances effected during the period from 17th March, 2012 to 31st March, 2012 by virtue of Explanation (C)(ii) of notification no.8/2003-CE dated 1.3.2003.

Illustration- If a manufacturer X clears goods of value 1.4 crore till 16th March 2012, and from 17th March to 31st March 2012 manufacturer X clears goods of transaction value 30 lacs, the total value of clearances for SSI exemption in financial year 2011-12 shall be calculated as follows:-

Value of clearances from 1st April 2011 to 16th March 2012= Rs. 1.4 crore

Value of clearances from 17th March to 31st March 2012= Rs. 9 lacs(30% of transaction value 30 lacs)

Total value of clearances financial year 2011-12= Rs. 1.49 crore

Last but not the least, Rule 12AA of the Central Excise Rules has been amended to provide that every person who gets articles of jewellery of heading no.7113 produced or manufactured on job-work shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with the procedural requirements, as if he is the manufacturer. In other words, those artisans or goldsmiths who only manufacture jewellery for others on job-work need not obtain registration. The option to the job-worker to register, if he so desires, has been deleted.

Before Parting ...

The industry has also taken a beating under the Income tax as well as the Customs Acts. While on the Customs front, the import duty on the gold has been increased from 2% to 4%, on the Income tax side, a levy of 1% TCS (Tax collection at source) on cash sales of bullion and jewellery in excess of Rs 2 lakh and recording of all such transactions with PAN Number, has been introduced!