



CHAPTER V USE OF BRAND NAME

Chapter note no. 13 of chapter 71 of the CET provides that the process of affixing or embossing trade name or brand name on articles of jewellery shall amount to ‘manufacture’ under heading 7113.

- An article of jewellery falling under chapter heading 7113, on which brand name or trade name is indelibly affixed or embossed is chargeable to central excise duty of two per cent ad-valorem and education cess of two per cent thereon.
- Chapter note no. 12 provides that, ‘brand name’ or ‘trade name’, whether registered or not, is a name or a mark, such as symbol, monogram or label which is used to indicate a connection, in the course of trade, between a product and some person using the name or mark with or without indicating the identity of that person.
- The Board clarified that the scope of levy was only with respect to jewellery marketed and sold under such brand names as clearly understood in the trade like ‘Tanishq’, ‘Sangini’ etc.
- It was also clarified that advertising and selling of products under a brand name and also putting the same brand name or an abbreviation thereof or a mark which has a connection with such brand name on the article of jewellery would be liable to duty.

We found that two manufacturers of branded jewellery embossed abbreviations on their products and did not pay excise duty of Rs. 63.97 crore on the plea that they were not embossing their brand names on the product. The cases are detailed below.

5.1 Brand name ‘Tanishq’

The well known branded jewellery, ‘Tanishq’ is manufactured by M/s Titan Industries Limited, Jewellery Division, Hosur (Chennai III CE commissionerate). It imports gold bars and also procures gold from RBI nominated agencies and thereafter manufactures and clears gold jewellery. It advertised and marketed its products under the registered brand name ‘Tanishq’, embossed it on the jewellery and paid duty at two per cent ad-valorem for clearances made upto June 2006. From July 2006, the unit stopped paying duty on the plea that it had discontinued embossing the brand name.

We found that the assessee continued to advertise and market its products under the same brand name. It replaced the emboss of ‘Tanishq’ with a mark ‘Q’, and continued to sell the jewellery through the showrooms of ‘Tanishq’. The department did not take to steps to levy duty although the Board had clarified that embossing any mark which would indicate a connection between the product and a brand name i.e. Tanishq, would render the product liable to duty. All cases prior to April 2008 have now become time-barred and the non

payment of duty for the period from September 2005 to March 2008 has resulted in loss of revenue of Rs. 53.65 crore including education cess.

On the matter being pointed out (January and February 2009), the department stated (February 2009) that the assessee had stopped embossing their brand name and instead started embossing the letter 'Q' in order to identify the goods. Therefore, the exemption availed was in order. It added (March 2009) that a protective SCN was issued in March 2009 demanding a duty of Rs. 49.83 crore for the period from September 2005 to December 2008.

The reply of the department is not tenable. The jewellery manufactured by the assessee is identified by the mark 'Q', which establishes a connection between the product and the assessee who is using that mark. Therefore, according to the clarification given by the Board, any jewellery with the mark 'Q' is connected to the brand name 'Tanishq' and liable to duty.

Moreover, while issuing the SCN, the department has verified that the assessee had sold the gold jewellery through their retail outlets 'Tanishq' with the outer packing showing the brand name 'Tanishq'.

5.2 Jewellery embossed with 'SCL'



M/s Surana Corporation Limited, falling under the jurisdiction of Chennai I CE commissionerate, manufactured and cleared gold jewellery through their showroom for domestic sales/trading. The unit imported gold and also procured from nominated agencies and traders in India. The jewellery was sold after embossing the abbreviated name of the manufacturer viz., 'SCL' which falls within the

definition of 'Trade name/Brand name' as defined in the chapter notes. However, no excise duty was paid by the assessee on the pretext that this activity did not amount to manufacture.

In our opinion, the mark 'SCL' embossed on the jewellery fulfils the definition of a brand name because it establishes a connection with the user of the mark i.e. the Surana Group. Therefore, the product is branded jewellery and attracts duty at two per cent ad-valorem.

During the period 2005-06 to 2008-09 (upto September 2008), jewellery valued at Rs. 502.29 crore was manufactured and sold in the local market under the brand/trade name and the non-payment of excise duty worked out to Rs. 10.32 crore.

On the matter being pointed out (January and February 2009), the department did not accept our contention that embossing the abbreviated name 'SCL' brought the jewellers within the ambit of brand name/trade name as defined in chapter 71 and stated (February and April 2009) that identification code numbers like S1, S5, S9 etc., were written manually to identify the goldsmith.

The reply of the department is not consonant with the chapter notes and the clarification of the Board. Moreover, the website of the assessee clearly shows that the abbreviation 'SCL' is an integral part of the logo of the company and establishes a clear connection with the owner of the logo.

New Delhi
Dated :

(SUBIR MALLICK)
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Countersigned

New Delhi
Dated :

(VINOD RAI)
Comptroller and Auditor General of India