

ALL INDIA GEMS & JEWELLERY TRADE FEDERATION
PROMOTING • PROTECTING • PROGRESSING

A1/137, Shah & Nahar Industrial Estate, Dhanraj Mill Compound, Lower Parel, Mumbai - 400 013, India
Tel. : 91-22-6660 7741 / 42 / 43 Fax : 91-22-6660 7740 Email : Info@gjf.in Website : www.gjf.in



LEGAL OPINION

Private and confidential circular, strictly for GJF Members

Exemption from excise duty on unbranded jewellery

(
(
|

1	Brief Facts	2
2	Queries	4
3	Analysis of Leal Position	5
4	Conclusion	13

Privileged/Confidential information may be contained in this opinion and is intended for the use only by the addressee(s) named herein. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this opinion is strictly prohibited. If you have received this opinion by error, please notify us immediately. Thank You.

1. Brief Facts

We are informed vide meeting dated 13.12.2011 and 17.12.2011 as under:

- M/s. All India Gems & Jewellery Trade Federation (hereinafter referred to as “the querist”), is an association of number of manufacturers, wholesalers and retailers who are engaged in the manufacture & trading of articles of gems and jewellery across India. These goods fall under Charter Heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as “CETA”).
- The member units of the querist are manufacturing the articles of jewellery either themselves or getting them manufactured through other goldsmiths on job-work basis.
- The articles of jewellery manufactured by member units of the querist do not bear any brand name. However, such articles may bear hallmark/ house mark/ symbol/ logo/ initials etc. of the manufacturer/ goldsmith for the purpose of identification at the time of resale by the customer. Such mark/ logo etc. are generally not published or popularized through advertisement or sold to franchisees. The said marks are put by the member units/ goldsmiths only for identity or quality assurance purposes.
- The packaging material such as jewellery boxes/ pouches etc. and the warranty cards under which the articles of jewellery are sold, bear the logo / initials of the member units which may or may not constitute a brand name.
- Serial No. 24 of Notification No. 5/2006-CE dated 1.3.2006 (hereinafter referred to as “Notification No. 5/2006-CE”) provides full exemption to ornaments and like articles made of gold or silver or platinum, falling under Chapter 71 of the CETA from payment of excise duty subject to the satisfaction of Condition No. 8 contained in the Annexure to the Notification. Condition No. 8 provides that exemption shall not be applicable to articles of jewellery of heading 7113 on which brand name or trade name is indelibly affixed or embossed on the article of jewellery itself.
- Recently, vide Serial No. 88 of Notification No. 1/2011-CE dated 1.3.2011 (hereinafter referred to as “Notification No. 1/2011-CE”), introduced vide Union Budget 2011-12, the excise duty has been reduced to 1% on ‘articles of jewellery manufactured or sold under a brand name’ subject to the condition of non-availment of Cenvat credit on inputs and input services.

- An option to pay excise duty @ 5% has also been granted vide Serial No. 48 of Notification No. 2/2011-CE dated 1.3.2011 (hereinafter referred to as “Notification No. 2/20 1 1-CE”) along with facility to avail Cenvat credit.
- The Ministry of Finance vide CBEC Instruction D.O. F.No. B-1/3/2011-TRU dated 25.3.2011 has clarified the scope of above amendment. The Circular inter-alia clarifies that if the manufacturer puts the brand name either on the jewellery or article itself or on the packing such as the jewellery box or pouch or even on the warranty card or certificate of quality, such goods will clearly be treated as branded and will be liable to duty.
- Based on the above, the department is asking the member units of the querist to pay excise duty on the articles of jewellery, where the brand name is not indelibly affixed or embossed on article of jewellery itself but is put on the packaging material such as jewellery box / pouches etc. or the warranty cards.

2. Queries

In the light of above background, we have been asked to advise the querist on the following issue:

- Whether the member units of the querist are liable to pay excise duty on the articles of jewellery manufactured by them, where the brand name is not affixed or embossed on the article of jewellery itself but is put on the packaging material/ warranty cards etc. under which they are sold?

3. Analysis of Legal Position

3.1 Exemption under Notification No. 5/2006-CE dated 1.3.2006

3.1.1 The articles of jewellery manufactured by the member units of the querist fall under Chapter heading⁹ 7113 of the First Schedule to the CETA.

3.1.2 Entry (II) of Serial No. 24 of Notification No. 5/2006-CE provides exemption to ornaments and like articles made of gold or silver or platinum, whether or not set with stones or gems (real or artificial), or with pearls (real, cultured or imitation) or with stones, gems and pearls or any combination thereof, from payment of excise duty subject to the satisfaction of Condition No. 8 contained in the Annexure to the Notification.

3.1.3 Condition No. 8 to the Notification No. 5/2006-CE provides that this exemption shall not be applicable to articles of jewellery of heading 7113 on which brand name or trade name is indelibly affixed or embossed on the articles of jewellery itself.

3.1.4 Explanation to Serial No. 24 of the above Notification inter-alia provides that for the purpose of entry (II), "ornament" means a thing, in any finished form, meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of, or manufactured from, gold or silver or platinum or any one or more of them, whether or not set with stones or gems (real or artificial) or with pearls (real, cultured or imitation), or with all or any of them and includes parts, pendants or broken pieces of ornaments.

3.1.5 Therefore, articles of jewellery of heading⁹ 7113, where the brand name or trade name is not indelibly affixed or embossed on the articles itself, are exempt from the payment of excise duty under Notification No. 5/2006-CE.

3.2 Exemption under Notification No. 1/2011-CE dated 1.3.2011 & Notification No. 2/2011 dated 1.3.2011

3.2.1 Notification No. 1/2011-CE and Notification No. 2/2011-CE have been issued vide Union Budget 2011-12 to bring into tax net certain items which were fully exempt from the payment of excise duty prior to 1.3.2011.

3.2.2 Serial No. 88 of Notification No. 1/2011-CE provides exemption to “Articles of jewellery manufactured or sold under a brand name” falling under Chapter heading 7113 of the First Schedule to the CETA from so much of the excise duty as is in excess of the amount calculated at the rate of 1% ad valorem.

3.2.3 The said exemption is subject to the condition that no credit of duty paid on input and tax paid on input services is taken by the manufacturer under Cenvat Credit Rules, 2004.

3.2.4 Serial No. 48 to Notification No. 2/2011-CE provides exemption to “Articles of jewellery manufactured or sold under a brand name” falling under Chapter heading 7113 of the First Schedule to the CETA from so much of the excise duty as is in excess of the amount calculated at the rate of 5% ad valorem.

3.2.5 Explanation to Serial No. 88 of Notification No. 1/2011-CE & Serial No. 48 of Notification No. 2/2011-CE provides that “brand name” means a brand name or trade name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

3.2.6 The above Explanations further provide that hallmarking of the jewellery shall not be considered to be branding. Further, an identity put by a jeweller or the job worker, commonly known as ‘house mark’ shall not be considered as brand name.

3.3 Application to the facts of the present case

3.3.1 The querist is an association of number of manufacturers, wholesalers and retailers who are engaged in the manufacture & trading of articles of gems and jewellery falling under Chapter Heading 7113 of the First Schedule to the CETA.

3.3.2 The member units of the querist are manufacturing the articles of jewellery either themselves or getting them manufactured through other goldsmiths on job-work basis.

3.3.3 The articles of jewellery manufactured by member units of the querist do not bear any brand name. However, such articles may bear hallmark/ house mark/ symbol/ logo/ initials etc. of the manufacturer/ goldsmith for the purpose of identification at the time of resale by the customer. Such mark/ logo etc. are generally not published or popularized through advertisement or sold to franchisees. The said marks are put by the member units/ goldsmiths only for identity or quality assurance purposes.

3.3.4 The packaging material such as jewellery boxes/ pouches etc. and the warranty cards under which the articles of jewellery are sold, bear the logo / initials of the member units which may or may not constitute a brand name.

- 3.3.5 The department is asking the member units of the querist to pay excise duty on the articles of jewellery, where the brand name is not indelibly affixed or embossed on article of jewellery itself but is put on the packaging material such as jewellery box/ pouches etc. or the warranty cards.
- 3.3.6 In the above background, the querist desires to know as to whether its member units are liable to pay excise duty on the articles of jewellery manufactured by them, where the brand name is not affixed or embossed on the article of jewellery itself but is put on the packaging material/ warranty cards etc. under which they are sold.
- 3.3.7 The articles of jewellery falling under Chapter heading 7113 of the CETA are subject to 10% rate of duty as per the CETA.
- 3.3.8 However, there are certain exemption Notifications viz. Notification No. 5/2006-CE, Notification No. 1/20 1 1-CE & Notification No. 2/20 1 1-CE, issued by the department providing for full or partial exemption from payment of excise duty on “articles of jewellery falling under Chapter heading 7113 of the CETA” subject to the conditions specified in the respective Notifications.
- 3.3.9 Let us firstly examine as to whether the articles of jewellery manufactured by the member units of the querist, which do not have any brand name affixed or embossed on them, but have house mark/ symbol/ logo etc. embossed on them or have a brand name on the packaging material/ warranty cards etc., would be covered under the scope of Notification No. 5/2006-CE for the purpose of enjoying full exemption from payment of excise duty.
- 3.3.10 As mentioned in Para 3.1.1 to Para 3.1.5 above, Notification No. 5/2006-CE provides full exemption from payment of excise duty to articles of jewellery of heading 7113 other than those on which brand name or trade name is indelibly affixed or embossed on the article of jewellery itself.
- 3.3.11 In the instant case, the articles of jewellery manufactured by the members of the querist do not have any brand name or trade name indelibly affixed on the said jewellery articles. However, these articles may bear hallmark/ house mark/ symbol/ logo/ initials etc. of the manufacturer/ goldsmith for the purpose of identification at the time of resale by the customer. Such mark/ logo etc. are generally not published or popularized through advertisement or sold to franchisees. The said marks are put by the member units/ goldsmiths only for identity or quality assurance purposes. Further, the packaging material

such as boxes/ pouches etc. or warranty cards under which the articles of jewellery are sold by the member units of the querist have a brand name printed on them.

3.3.12 Here, there is a need to examine as to whether the member units of the querist can be denied exemption under Notification No. 5/2006-CE on the grounds that house mark/ symbol/ logo etc. is embossed on jewellery or brand name is printed on packaging material or warranty cards etc.

3.3.13 At this juncture, it is relevant to look at the legislative history with respect to the levy of excise duty on branded jewellery. The excise duty @ 2% was first imposed on the branded articles of jewellery falling under Tariff Heading 7113 of the CETA vide Union Budget 2005-06. S.No. 26 of Notification No. 5/2006-CE dated 1.3.2006 provided 2% excise duty on articles of jewellery on which brand name or trade name is indelibly affixed or embossed on the article of jewellery itself.

3.3.14 Circular F.No.B-1/1/2005-TRU dated 4.3.2005 issued by the Ministry of Finance, at the time of Union Budget 2005-06 clarified that duty is leviable only if the brand name or the trade name is indelibly affixed or embossed on the article of jewellery itself. Further, the department explained the scope of levy by way of various illustrations. It was clarified that if a jeweller gets his articles of jewellery manufactured from gold smiths/job workers who put a mark/sign/initials, etc. on the article of jewellery for the purpose of identification, such jewellery would not be considered as branded jewellery and will not attract the tax. It was further clarified that a jeweller, when it sells articles of jewellery to customers, puts a distinctive sign/mark/initials etc. on the jewellery for the purpose of identification so that when the jewellery is returned to jeweller, it will recognize the jewellery as its own. The jeweller does not sell the jewellery under a brand name. This will not be treated as branded jewellery, and will not attract the tax. Further, the department clarified that 'hallmarking' cannot be treated as 'branding' for the purposes of the excise levy.

3.3.15 It should be noted that the above Circular clarifies the scope of branded jewellery for the purpose of levy under S.No. 26 of Notification No. 5/2006-CE introduced vide Union Budget 2005-06. The scope of levy under S.No. 26 of Notification No. 5/2006-CE is just the counterpart of exemption under S.No. 24 of Notification No. 5/2006-CE. Therefore, reliance can be placed on the above Circular so as to understand the scope of exemption under S.No. 24 of Notification No. 5/2006-CE.

- 3.3.16 From the above Circular, it is clear that if the member units of the querist put hallmark/ house mark/ symbol/ logo/ initials etc. of the manufacturer/ goldsmith on the article of jewellery merely for the purpose of identification at the time of resale by the customer, such articles of jewellery would not be considered as branded and will still be eligible for exemption under Notification No. 5/2006-CE.
- 3.3.17 Further, Notification No. 5/2006-CE excludes only those articles of jewellery of heading 7113 from its scope on which brand name or trade name is indelibly affixed or embossed on the article of jewellery itself. There is no bar in the Notification to put the brand name on the packaging material, warranty cards, cash memo etc.
- 3.3.18 Therefore, if the articles of jewellery manufactured by the member units of the querist do bear any brand name indelibly affixed or embossed on them, but are sold in the packaging material or along with warranty cards bearing the brand name, the same would be entitled for exemption under Notification No. 5/2006-CE, irrespective of the fact that brand name is printed on packaging material/ warranty cards etc.
- 3.3.19 Let us now understand the scope of Notification No. 1/20 11-CE & Notification No. 2/20 11-CE which provide for partial exemption from payment of excise duty on articles of jewellery falling under Chapter heading 7113 of the CETA, manufactured or sold under the brand name.
- 3.3.20 Notification No. 1/201 1-CE levies excise duty @ 1% on “Articles of jewellery manufactured or sold under a brand name” falling under Chapter heading 7113 of the First Schedule to the CETA.
- 3.3.21 Explanation to Notification No. 1/20 11-CE provides that “brand name” means a brand name or trade name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.
- 3.3.22 The above Explanation further provides that hallmarking of the jewellery shall not be considered to be branding. Further, an identity put by a jeweller or the job worker, commonly known as ‘house mark’ shall not be considered as brand name.
- 3.3.23 Further, the department vide CBEC Instruction D.O. F.No. B-1/3/2011-TRU, dated 25.3.2011 (hereinafter referred to as the “Circular”) issued at the time of passing Finance

Bill, 2011 has clarified as to what constitutes a brand name for the purposes of the above exemption Notifications.

3.3.24 As per the Circular, only such jewellery or other articles of precious metals which either bear or are marketed and sold under a brand name, attract this levy. There are certain illustrations mentioned in the Circular to explain the scope of the term "brand name" which are as follows:

- (i) A manufacturer, say "ABC Jewellers", gets jewellery or other articles manufactured on his behalf from gold smiths/job-workers who put a mark/sign/initials, etc. on the jewellery/article. This is only to identify that the article or jewellery was received from a particular goldsmith, etc. This is not branded jewellery and will not attract duty.
- (i) "ABC Jewellers", when it sells articles of jewellery to customers, puts a distinctive sign/mark/initials etc. on the jewellery, very often a simple acronym of his name e.g. ABC. It may be noted that mere alphabets or numerals (unless stylized) cannot be registered as a brand name or trademark. This is again for the purpose of identification when the customer re-sells or returns the jewellery or article and goods bearing it would not attract the levy.
- (i) "ABC Jewellers" advertises and sells its products under the brand "Star" or puts a logo like ABC or ABC i.e. in a stylized manner. It also puts the same brand name or an abbreviation thereof or a mark which has a connection with such brand name either on the jewellery or article itself or on the packing such as the jewellery box or pouch or even on the warranty card or certificate of quality. Such goods will clearly be treated as branded and will be liable to duty.

3.3.25 The Circular further clarifies that hallmarking of the jewellery, which is an accurate determination and official recording of the proportionate content of precious metal in gold and is thus only official marks used as a guarantee of purity or fineness of gold jewellery, cannot be treated as 'branding for the purpose of the excise duty levy.

3.3.26 From the above Circular, it is clear that in a situation, where the articles of jewellery manufactured by the member units of the querist have only house-mark/ symbol/ logo/ initials etc. of the goldsmith/ manufacturer embossed on them, which is only for the purpose of identification of the goldsmith/ identification at the time of resale by the customer and does not constitute the brand name, the said articles of jewellery can not be

said to be manufactured or sold under brand name even for the purpose of Notification No. 1/2011 -CE or Notification No. 2/2011 -CE. Such articles of jewellery continue to be exempt under Notification No. 5/2006-CE and levy under Notification No. 1/2011 -CE/ Notification No. 2/2011 -CE does not get attracted.

3.3.27 However, as per the Circular, if the packages such as boxes/ pouches etc. or warranty cards under which the articles of jewellery are sold by the member units of the querist bear a brand name, the articles of jewellery manufactured or sold by the member units of the querist will qualify as those manufactured or sold under a brand name. In such a case, the excise duty levy @ 1% / 5% shall get attracted under Notification No. 1/2011 -CE/ Notification No. 2/2011-CE.

3.3.28 It is relevant to note here that though vide Notification No. 1/2011 -CE/ Notification No. 2/2011 -CE, excise duty @ 1% / 5% has been imposed on the articles of jewellery, where the brand name is not indelibly affixed or embossed on the article of jewellery itself but sold in the packaging material such as pouches/ jewellery boxes bearing the brand name, however, even after the aforesaid changes, exemption under Sr.No. 24 of Notification No. 5/2006-CE dated 1.3.2006 is still continuing. Consequently, the excise duty exemption under S.No. 24 of Notification No 5/2006-CE continues to be available to articles of jewellery on which brand name is not indelibly affixed or embossed on the article of jewellery itself irrespective of the fact that the brand name is put on the packaging material such as jewellery boxes/ pouches etc.

3.3.29 Therefore, only the articles of jewellery of heading 7113 of the CETA manufactured by the member units of the querist, having brand name or trade name indelibly affixed or embossed on them, would be liable to duty at the rate of 1% or 5% ad valorem, as the case may be.

3.3.30 The dispute has arisen due to the above overlapping scope of exemption contained in Notification No. 5/2006-CE & Notification No. 1/2011 -CE/ Notification No.2/2011-CE.

3.3.31 Since the articles of jewellery manufactured by the member units of the querist, do not have any brand name indelibly affixed or embossed on the article of jewellery itself, THE member units are eligible for exemption both under Notification No. 5/2006-CE and Notification No. 1/2011-CE / Notification No. 2/2011-CE. The member units have the option to avail benefit under any of the above Notifications.

3.3.32 It is a settled position of law that when the law and policy offer various alternative benefits, it is the assessee's option to choose the one which gives him maximum advantage. The Supreme Court has consistently held that where there are two exemption Notifications granting benefit to the goods in question, the assessee is entitled to the benefit of that exemption Notification which gives him greater relief and it is the duty of the authorities to grant such benefit:

(i) Share Medical Care vs. UOI, 2007 (209) ELT 321 (SC)

(i) HCL Limited vs. Collector of Customs, 2001 (130) ELT 405 (SC)

(i) CCE vs. India Petro Chemicals, 1997 (92) ELT 13 (SC)

3.3.33 Hence, relying on the above judgments, it can be said that the once the member units of the querist are entitled to claim full exemption from excise duty under Notification No. 5/2006-CE, the member units of the querist cannot be forced to pay excise duty @ 1% / 5% under Notification No. 1/2011 -CE/ Notification No. 2/2011-CE.

3.3.34 Therefore, in our view, the member units of the querist are legally entitled to claim exemption under the Notification No. 5/2006-CE. Consequently, the department cannot raise any demand of excise duty relying on the Circular. However, in view of the overlapping scope of exemption contained in Notification No. 5/2006-CE & Notification No. 1/2011 -CE/ Notification No. 2/2011 -CE, the departmental authorities may raise the dispute. In such a case, the member units of the querist will have to litigate the matter with the department. Based on the above discussions, the member units of the querist have a good case to argue.

3.3.35 The querist is advised to file a representation before the Ministry of Finance to bring to the attention the above dichotomy that is being created by amendment made by Union Budget 2011-12 with regard to the levy of excise duty on branded jewellery, so that a suitable clarification may be issued by way of a Circular clarifying that the excise duty is leviable only on such articles of jewellery where the brand name/sign has been affixed/embossed on the article of the jewellery itself. Such a clarification would harmonize the Notification No. 5/2006-CE with the Notification No. 1/2011-CE and 2/2011-CE.

4. Conclusion

4.1 The table below summarizes the legal position with respect to the payment of excise duty on articles of jewellery:

Situation	Brand Name	affixed on	Effective rate of excise duty	Benefit under which exemption Notification
	Article of jewellery	Packaging article such as boxes/ pouches etc. or warranty cards.		
I	Yes	No	1% or 5%	Notification No. 1/2011-CE or Notification No. 2/2011-CE
II	Yes	Yes	1% or 5%	
III	No	No	Nil	Notification No. 5/2006-CE
IV	No	Yes	Nil	

4.2 The querist is advised to file a representation before the Ministry of Finance to bring to the attention the dichotomy that is being created by amendment made by Union Budget 2011-12 with regard to the levy of excise duty on branded jewellery.

Scope Limitation

This Opinion is based on the facts made available to us in the request for opinion and on the statutory/legal position including the judicial and administrative interpretations thereof prevailing upto and inclusive of 22.12.2011.

V. Lakshmi Kumaran

Advocate