

Jewellery, Job Work & Exemption – Signs of Litigation

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Introduction

Excise duty on jewellery is running in its transitional phase. The government has kept it sweet and simple, both in rate as well as in procedures. Being government's most awaited and stressful levy, a simplest procedure has been prescribed - like higher level of SSI exemption, lowest rate of excise duty with the benefit of credit on input services, non-maintenance of separate accounts (as records kept for the purpose of BIS & VAT will be accepted), no normal visits by Central Excise Officers, etc. Thus, government has tried its best to make a smooth path for success of this levy. But wait... whether everything is in line and free of ambiguities? No, particularly those provisions related to "job work". In this article, an effort is made to look into the provisions related to job work of jewellery, benefits extended and threats involved therein.

Exemption to Job worker of jewellery

The job worker who undertakes manufacture of jewellery is not required to obtain registration under Central Excise and comply with the formalities stipulated in the Central Excise Act, 1944 and rules framed thereunder. It is the supplier of gold or other precious metal, who is liable to comply with all the Central Excise formalities in such a way as if he is the manufacturer of jewellery manufactured by the job worker on his behalf. Thus, an artisan or goldsmith who only manufactures jewellery on job-work basis is not required to register with the Central Excise, pay duty and file returns, as all these obligations will be on the principal manufacturers.

Meaning of Job worker

The term job worker has been defined in the explanation to Rule 12AA of Central Excise Rules, 2002, as follows:-

"job worker" means a person engaged in manufacture or processing on behalf and under the instructions of the said person from any inputs or goods supplied by the said person or by any other person authorized by the said person, so as to complete a part or whole of the process resulting ultimately in manufacture of articles of jewellery falling under heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985, and the term "job work" shall be construed accordingly.

Thus, where the job worker is involved, even though the entire manufacture is being undertaken by him, the liability under Central Excise law has been put on the supplier of inputs.

Hidden threats

Government has kept the small artisans and jobbers undertaking the jewellery manufacture away from liabilities under Central Excise Act. This has been done to secure the interest of small artisans who undertake the job work for nominal charges. The main person making the money out of the entire transaction is the supplier of inputs, i.e. gold or other precious metals who undertake the purchase of gold, get the jewellery made and sale it by earning huge profits. However, whether this benefit extended to job workers is free from ambiguity? Is there any threat of misusing the benefit so extended to the small artisans? Yes... it is there... Let's take a look on probable threats involved in the exemption granted to job workers:-

- ◆ The person supplying the gold is responsible for complying with the excise formalities, not the artisans or jewelers. There are lots of chances of misuse of this provision. In order to escape from excise liability, the jeweller may sell the gold to person. Thereafter, that person may provide the same gold on job work for making the jewellery. According to legal provisions, the liability to comply with excise provisions will be on the person supplying the gold and that person will not exceed the threshold limit of Rs. 6 crores. Thus, the person supplying the gold will avail the benefit of SSI exemption and goldsmith will also not be liable to pay the excise duty. In such cases, the government will not earn anything in the name of excise duty. Thus, chances of modus operandi will be quite high and it is possible that there may be misuse of the benefit so extended to small artisans.
- ◆ The liability to pay excise duty will rest upon the person supplying the gold to goldsmith for making the ornaments. Though it has not been clarified specifically, but it is presumed that the person supplying the gold will be required to follow the procedure prescribed for sending the goods on job work. This is quite difficult as a no. of persons will be individuals interested in making the jewellery for personal purpose. Since there is no clarification on the issue, department may disallow the benefit of job work if the conditions prescribed in this regard are not followed. Accordingly, the duty liability may fall on the goldsmiths/small artisans in such cases. If that be the case, the essence of allowing the said benefit will be taken away. The government should clarify this issue in order to avoid the litigation.
- ◆ Sometimes, the jewellery making process involves a no. of processes which are undertaken by different job workers. For example, after melting gold and framing

out piece of jewellery, it is sent for studding precious stones to job worker A, thereafter same piece is sent for rhodium polishing to job worker B, etc. There are a no. of processes after which a finished piece of jewellery comes out. There are no clarifications on such issues what will be treatment in such cases, whether all the artisans will be exempted, who will be treated as principal supplier in cases where piece of jewellery is sent to job worker B directly from job worker A without bringing it back to place of principal supplier.

- ◆ There are cases where the customer brings old jewellery and asks for making a new piece by melting the same. How such cases will be dealt, how valuation of new jewellery will be done, how the exchanges will be handled under Central excise, whether excise duty will be payable in the cases of re-polishing of old ornaments, etc. There are no. of issues involved which needs to be addressed in order to avoid litigation in future.

While parting

There are threats of misusing every exemption. However, in case of jewellery, these threats seem to be on higher side. Besides this, there are a couple of other issues too, as discussed above, which needs to be addressed soon in order to avoid litigation. However, here it should be noted that clarifications before litigation or litigation before clarification... both are synonyms and it is the assessee who suffers... in both the cases.

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