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INDIRECT TAX

CASE STUDY 1

Gramin Power Corporation Ltd. is engaged in the activity of generation and distribution of electricity in the rural area of the state of Maharashtra. The central excise officer demanded notice for generation and distribution of electricity. The assessee contended that before levy of excise duty, electricity must fall under the definition of goods i.e. movable (or tangible) and marketable. Advice whose contention is correct.

Solution:

As per **section 3 of Central Excise Act (CEA)** excise duty is levied if: -

1) There is a good.

2) Goods must be moveable

3) Goods are marketable

4) Goods are mentioned in the central excise tariff act (CETA).

5) Goods are manufactured in India.

Taxable event means the stage when tax is levied/ applied. Manufacture or production in India is the stage of levying tax. However, the government, at the time, when the goods are removed from the factory, i.e., goods are taken out from factory, collects tax. Since, excise duty is levied at the time of removal of goods. Thus, it becomes taxable at the time of their removal and therefore, the date of its actual production is not relevant.

The date of removal is relevant and the rate of excise duty applicable on the date of removal shall be actual rate of excise duty to be paid.

Hence, the contention of the assessee is correct. Before levy of excise duty, electricity must fall under the definition of goods i.e. movable (or tangible) and marketable. Electricity is movable property though it is not tangible. It is ‘goods.’ So, the excise duty shall be levied on it.

CASE STUDY 2

Zotec Engineering Ltd. was engaged in fabrication, assembly and erection of water treatment plant. He build Water Treatment Plant for one of its client for `1.5 crores. Zotec Engineering Ltd. purchased duty paid parts of water treatment plant in unassembled form and assembled to the ground with civil work at client site. The Department alleged that the assessee had fabricated/manufactured the water treatment plant. It further alleged that water treatment plant came into existence in an unassembled form before the same was installed and assembled to the ground with civil work. It became operational after it was embedded in the civil work and, therefore, the excise duty was payable on it. Advise the taxability of the same

Solution:

(Reference: Larsen & Toubro Limited v. UOI 2009 (243) E.L.T. 662 (Bom.))

Section 2(f) of the Central Excise Act, 1944

The assessee was engaged in fabrication, assembly and erection of waste water treatment plant. As per the assessee, the plant could not function as such until it was wholly built including the civil construction. Since, after being completely built, waste water treatment plant became immovable, duty could not be levied on it.

However, the Department alleged that the assessee had fabricated/manufactured the waste water treatment plant. It further alleged that waste water treatment plant came into existence in an unassembled form before the same was installed and assembled to the ground with civil work. It became operational after it was embedded in the civil work and, therefore, the excise duty was payable on it.

The High Court opined that mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site does not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts. In the present case, the petitioner had stated that the waste water treatment plant did not come into existence unless all the parts were put together and embedded in the civil work. Waste water treatment plant did not become a plant until the process which included the civil work, was completed.

Thus, the Court held that no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works. Hence, the fabrication, assembly and erection of waste water treatment plant does not amount to manufacture.

CASE STUDY 3

Appu Ltd. is a manufacturer of motor parts (two-wheeler) suffering loss due to low production since last five years. The management of the company appoint cost accountant to identify the bottleneck of the production process. The cost accountant submitted his report. The management on the basis of report initiates repairs & maintenance job to improve the production capacity of the company. After repair & maintenance, the production capacity is increase twice. The excise department alleged that the process amount to manufacture and raise demand for the same. Is the contention of the department is tenable?

Solution:

(Grasim Industries Ltd. vs. UOI 2011 (273) E.L. T. 10 (S.C.))

Manufacture in terms of section 2(f) includes any process incidental or ancillary to the completion of the manufactured product. This 'any process' can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to the raw material at various stages by different operations or a new and identifiable product must emerge as a result of the process. The process in relation to manufacture means a process which is so integrally connected to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient.

However, in the present case, it is clear that the process of repair and maintenance of the machinery does not emerge a new and identifiable product

The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product.

CASE STUDY 4

DNA Pharma Ltd is a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments. During the course of such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products.

Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture?

Solution:

(Reference: Usha Rectifier Corpn. (I) Ltd. v. CCEx., New Delhi 2011 (263) E.L.T. 655 (S.C.))

The appellant was a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments. During the course of such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products.

The appellant had Stated in their balance sheet that the addition to the plant and machinery included testing equipments. The said position was further substantiated in the Director's report wherein it was mentioned that during the year, the company developed a large number of testing equipments on its own.

However, the assessee contended that such items were assembled in the factory for purely research and development purposes, but research being unsuccessful, same were dismantled. Hence, it would not amount to manufacture. The appellant further submitted that the said project was undertaken only to avoid importing of such equipment from the developed countries with a view to save foreign exchange.

The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on. Moreover, assesse's Stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange confirmed that such equipments were saleable and marketable.

Hence, the Apex Court elucidated that duty was payable on the testing equipments

CASE STUDY 5

Notor India Ltd., was engaged in assembling and installing the parts and components of asphalt mix, drum mix/hot mix plant. The Department alleged that the assembling and installing the parts and components of asphalt mix, drum mix/hot mix plant amounted to manufacture. It is contented that the said plant was not immovable. Attachment of Plants and Nuts and bolts was only intended to provide stability and prevent vibration. The attachment was easily detachable from foundation and not permanent. Therefore the assessee was liable to pay duty on the said plant.

Whether the machine which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under The Central Excise Act?

Solution:

(Reference: (i) Union of India V. Delhi Cloth and General Mills Co. Ltd. - 2002-TIOL-12-SC- CX -LB, (ii) BPL India Ltd. V. CCE (2002) 5 SCC 167 , (iii) Sirpur Paper Mills Ltd. V. Collector of Central Excise, Hyderabad - 2002-TIOL-200-SC- CX)

The Supreme Court observed that any machinery which is used for mixing is dutiable. That Asphalt Drum/Hot Mix Plant is machinery meant for mixing etc. was not disputed. It was fairly conceded that assembling, installation and commissioning of Asphalt Drum/Hot Mix Plants amounted to manufacture inasmuch as the plant that eventually came into existence was a new product with a distinct name, character and use different from what went into its manufacture.

Supreme Court added to the above is the fact that Section 2(f) of the Central Excise Act does not define the term "manufacture" exhaustively. The definition is inclusive in nature and has been understood to mean bringing into existence a new product with a distinct name, character and use.

CASE STUDY 6

Green Furniture India Ltd. engaged in the business of acquiring Office Furniture System/ Work Station from his supplier in completely Knock down (CKD) condition and the same is assembled and installed at its customers' premises.

Whether the assessee is required to pay duty on the activity of assembling and installing furniture at its customers' premises out of the components of Office Furniture System/ Work Stations (OFS/WS) purchased from the supplier?

Solution:

(REFERENCE : CCEx., Delhi v. Blow Plast Ltd. 2009 (236) E.L.T. 631 (Del.))

The assessee contended that they were only marketing OFS/WS and the entire system already stood duty paid at the hands of the manufacturer. Thus, the question under consideration was whether assembling and installing furniture at customer's premises out of components of Office Furniture System/Work Stations (OFS/WS) purchased from the supplier amounted to manufacture.

The High Court, held that nothing new had come into existence so as to bring the activities of the assessee within the parameters specified in section 2(f) of the Central Excise Act, 1944. What the assessee received was complete OFS/WS and what it left on its clients' sites was also complete OFS/WS. Nothing new had come into existence. Hence, no duty was payable by the assessee.

In the given case Green Furnitures India Limited is engaged in procuring the (duty paid) Office Furniture System/Work Stations (OFS/WS) from the suppliers and reacting and installing them at site of customers, from whom it has produced the order.

The Office Furniture System or Work Stations (OFS/WS) was procured by the Green Furniture India Ltd., after payment of duty thereon (Assumed). Hence, the manufacture has already taken place at the premises of the supplier (i.e. manufacturer). Therefore, nothing new product had come into existence in the hands of assessee (i.e. Green Furniture India Ltd.,) at the time of installing the same at the site of customers. Thereby no duty is required to pay by the assessee. From the above it is evident that the revenue allegation is not tenable in the eyes of central excise law.

CASE STUDY 7

Eco-System Entertainment Pvt. Ltd. is engaged in importing compact disk from Korea and repacks it along with inlay card for sale in local distributor. The Department of revenue contended that the process is manufacture and raise a demand for ` 20 lakhs. The assessee appoint Cost Audit firm to defense his case against the revenue. Does the activity of packing of imported compact discs in a jewel box along with inlay card amount to manufacture?

Solution:

(Reference: CCE v. Sony Music Entertainment (I) Pvt. Ltd. 2010 (249) E.L.T. 341 (Bom.))

The appellant imported recorded audio and video discs in boxes of 50 and packed each individual disc in transparent plastic cases known as jewel boxes. An inlay card containing the details of the content of the compact disc was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale. The Department contended that the said process amounted to manufacture.

The High Court observed that none of the activity that the assessee undertook involved any process on the compact discs that were imported. It held that the Tribunal rightly concluded that the activities carried out by the respondent did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee. They had been imported in finished and completed form.

CASE STUDY 8

The assessee Minwool Rock Fibres Ltd.'s contention was that the appropriate classification for their product "rockwool and slagwool" was under Chapter sub-heading No. 6807 10 of the Act while the Department contended that the appropriate classification was under Chapter subheading No. 680300 of the Act. In case of specific classification viz-a-viz classification based on material used/ composition of goods, which one should be adopted?

Solution:

(References: 1.Commissioner of Central Excise, Bhopal Vs. Minwool Rock Fibres Ltd. 2. M/s Narne Tulaman Manufacturers Pvt. Ltd. Hyderabad V. Collector of Central Excise, Hyderabad - 2002-TIOL-144-SC- CX)

The Tribunal has accepted the assessee's stand that the goods namely, Slagwool and Rockwool are to be classified under Chapter sub-heading No.6807.10 by rejecting the stand of the revenue that it requires to be classified under sub-heading No.6803.00. . A show cause notice was issued to the assessee directing them to show cause as to why the goods in issue should not be classified under Chapter sub-heading No.6803.00 and duty of 18% should not be charged and recovered from them under Rule 9(2) read with Section 11-A of the Act and as to why penalty should not be imposed under Rule 173Q of the Rules.

No doubt there is a specific entry which speaks of Slagwool and Rockwool under Sub-heading No.6803.00, but there is yet another entry which is consciously introduced by the Legislature under sub-heading No.6807.10, which speaks of goods in which Rockwool, Slagwool and products thereof are manufactured by use of more than 25% by weight of blast furnace slag. It is not in dispute that the goods in question are those goods in which more than 25% by weight of one or more of red mud, press mud or blast furnace slag is used. If that be the case, then, in a classification dispute, an entry which is beneficial to the assessee requires to be applied and the same has been done by the adjudicating authority, which has been confirmed by the Tribunal.

Alternatively, it can be said that Sub-heading No.6807 is specific to the goods in which more than 25% by weight, red mud, press mud or blast furnace slag is used. The heading is based entirely on material used on composition of goods. A tariff heading, based on composition of goods, is also specific heading like a heading based on commercial nomenclature. Therefore, we are of the view that the goods in issue are appropriately classifiable under Sub-heading No.6807.10 of the tariff entry.

The plant cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act. The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free. The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed.

The plants in question were neither attached to earth within the meaning of Section 3(26) of the General Clauses Act nor was there any intention of permanently fastening the same to anything attached to the earth.

CASE STUDY 9

"Dant Manjan Lal" (DML) is manufactured by M/s. Baidyanath Ayurved Bhawan Limited.While Baidyanath contended that the product DML was a medicament under Chapter sub-heading 3003 31 of the Central Excise Tariff Act, 1985, but the stand of the Department was that the said product was a cosmetic/ toiletry preparation/tooth powder classifiable under Chapter heading 3306.

How to determine whether a product is covered by 'cosmetics' or 'medicaments?

Solution:

(Reference: CCE, Nagpur Vs. Shree Baidyanath Ayurved Bhawan Ltd (Dated: April 13,2009)

The only issue in this batch of thirteen civil appeals is in respect of classification of Dant Manjan Lal (DML) manufactured by M/s. Baidyanath Ayurved Bhawan Limited (`Baidyanath', for short). While Baidyanath contends that the product DML is a medicament under Chapter Sub-heading 3003.31 of the Central Excise Tariff Act, 1985, the stand of the Department is that the said product is a cosmetic/toiletry preparation/tooth powder classifiable under Chapter Heading 33.06.

Baidyanath is engaged in the activity of manufacturing medicines adopting Indian systems. One of the products being manufactured by Baidyanath is DML. The product is a powder compounded with Geru, Peepall, Sonth, Kali Mirch, Tambakuh, Clove Oil, Camphor, Pepperment, Babul Chhal, Tumber Beej. Baidyanath claims that DML is manufactured in accordance with the formulae given in Ayurved Sar Sangraha (an authoritative text on the Ayurved system of medicine) by using the ingredients mentioned therein.

CE-Classification of Dant Manjan Lal -Merely because there is some difference in the tariff entries, the product will not change its character -The primary object of the Excise Act is to raise revenue for which various products are differently classified -Common parlance test continues to be one of the determinative tests for classification of a product -Merely because there is some difference in the tariff entries, the product will not change its character. Something more is required for changing the classification especially when the product remains the same."

The primary object of the Excise Act is to raise revenue for which various products are differently classified There is no doubt that a specific entry must prevail over a general entry DML is a tooth powder which has not been held to be Ayurvedic Medicine in common parlance. Common parlance test continues to be one of the determinative tests for classification of a product whether medicament or cosmetic. There being no change in the nature, character and uses of DML , it has to be held to be a tooth powder-as held in Baidyanath II. DML is used routinely for dental hygiene.

Since tooth powder is specifically covered by Chapter Sub-Heading 3306, it has to be classified thereunder.

CASE STUDY 10

Fiat India Pvt. Ltd. (Fiat) was the manufacture the motor car namely Fiat UNO and sell it into the market at the price of 50% (approx) of its cost price. Department raise the issue that loss selling price is not considered as the normal selling price and raise demand of duty. The Department adopted an average manufacturing cost supported by the finding of a Practicing Cost accountant and confirmed the demand of differential duty said of ` 432 crores. The assessee contended that the price which was adopted assessable value & to penetrate the market.

Whether the price used for selling of a product below the cost price for penetration of market can be considered as transaction value?

Solution:

(Reference: CCE V. FIAT India(P.,)Ltd)

FIAT at the time of entry into Indian market facing intense competition from others and was selling its cars at price less than its cost price to enable market penetration in competitive market. The cars were being cleared on payment of Excise Duty on the sale price to Dealers. Admittedly FIAT sold its cars to unrelated buyers i.e., Dealers receive only the price of the car. No additional consideration in monetary terms whatsoever flowed from Buyer/Dealer to FIAT. The Department rejected the value declared by FIAT and demanded duty on the cost of production plus the notional profit on the basis of the report of a Cost Accountant.

After losing the case at adjudication stage, FIAT went to Tribunal. The Tribunal granted relief to FIAT on the grounds that there were no allegations in the Show Cause notice that there were any extra Commercial consideration or flow back of money from the buyer to seller. The Department challenged the Decision of The Tribunal before The Supreme Court.

The Supreme Court held that the loss making price at which FIAT sold cars for more than 5 years is not a 'Normal Price' at which goods are 'Ordinarily Sold'.

The reasons are,

a. The selling Price of FIAT is below the Manufacturing Cost and FIAT maintained this price continuously for a period of 5 years with the only view to penetrate the market and the said price was not a 'Normal Price'

b. Normal Price should reflect the full commercial cost of the car.

c. Since the cars were sold below Manufacturing Cost and Manufacturing Profit the sale ought to be disregarded as not being done in Ordinarily Course of Sale

Based on the above reasoning, Supreme Court rejected the FIAT's Sale Price for the purpose of Excise Valuation and held that the Value should be determined as per The Valuation Rules.