

Excise Case laws/Circulars trade notices on Basic Concepts and Classification

1. Case Studies on Goods

Goods must be movable - They must be **movable** from one place to another place. An immovable property or property attached to earth is not 'goods' and hence duty cannot be levied on it - **Kailash Oil Cake Industries v. CCE - 1993 (CEGAT)**. - **National Radio v. CCE - 1995 (CEGAT)**.

Goods must be movable :the first aspect of goods is that they should be moveable. In **Union of India Vs. Delhi Cloth Mills (1977) ELT J-199** and in **South Bihar Sugar Mills Vs. Union of India (1978) ELT J-336**, the Supreme Court enunciated the principal that to be called goods, the articles must be such as are capable of being bought and sold in the market. The articles must be something, which can ordinarily come or can be brought to the market to be bought and sold.

Goods must be Marketable - The item must be such that it is **capable of being** bought or sold. This is the test of 'Marketability'. The goods must be known in the market. Unless this test of marketability ['Vendibility Test']. is satisfied, duty cannot be levied, as these will not be goods. **UOI v. Delhi Cloth Mills (SC)**.

Goods must be Marketable: It was held that the duty of excise is on the manufacture of goods and for an article to be "goods", it must be known in the market as such or must be capable of being sold in the market as goods. Actual sale is not necessary **C.C.EX Vs Ambala Sarabha Enterprises (1989) (43) ELT-214 (SC)**

Refined oil' got produced at intermediate stage that process of deodorization was not carried out on the 'refined oil'. In the market, the product is not known as 'refined oil' unless it is deodorized. Applying this 'marketability test', it was held that the 'refined oil', which is not 'deodorized', is not 'goods'. **Delhi Cloth Mills SC**

Actual sale is not necessary - Marketability is an essential ingredient in order to be dutiable. Marketability is a decisive test for dutiability. It only means 'saleable' or 'suitable for sale'. It need not in fact be marketed. The article should be capable of being sold to consumers, as it is - without any thing more. - **Indian Cable Co. Ltd. v. CCE - 1994 (SC)**

Mere mention in Tariff is not enough, Marketability is essential - Mere mention of an item in tariff is not enough. Simply because a certain article falls within the schedule (of Central Excise Tariff), it would not be dutiable if the article is not 'goods' known to the market. For example - crude PVC films (intermediate product) manufactured by the assessee for captive consumption, for further manufacture of leather cloth were not marketable in that stage and hence not dutiable. **Bhor Industries Ltd. v. CCE (SC)** – Similar view are also held in. - **Ion Exchange (India) Ltd. v. CCE (SC) s. & UOI v. Delhi Cloth and General. I**

It was held that where a product could neither be sold nor consumed in the market, nor was capable of being sold or consumed, it would not be liable to duty. **Madura Coats Ltd. Vs. Asstt. Collector of C.C.EX. (1990) (48) ELT-321, Madras HC**

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Every thing that is sold is not 'marketable' - 'Marketability' implies regular market for a product. Occasional, stray or distress sales do not mean that the product is 'marketable'.

Marketability to be decided on the basis of the state in which it is produced - The commodity which is sought to be made liable to excise duty must be a commodity that is marketable as it is, and not a commodity that may, by further processing, be made marketable - UOI v. DCM SC 2429 (SC 3 member bench) - same view in **Wochardt Ltd. v. CCE 1999 (CEGAT) * Eastern Coils v. CCE 2001 (CEGAT)**.

Conclusion from the above cases in order to levy excise duty goods should be movable marketable and excisable.

Goods 'excisable' even if exempt from duty - 'Excisable goods' do not become non-excisable goods merely because they are exempt from duty by an exemption notification - **Wallace Flour Mills Co. Ltd. v. CCE (1989) (SC)**.

If exemption is granted u/s 5A(1), goods do not cease to be excisable goods and levy of duty is not erased. – **CCE v. SmithKline Beecham Consumer HealthCare Ltd. 2003(151) ELT 5 (SC)**.

If at the time of manufacture if there is no levy of Excise duty, (Non excisable goods) then the goods manufactured during the period cannot be levied excise duty, even subsequent to manufacture (at the time of removal) when goods brought in to duty. (Vazir sultan tobacco Co. Ltd.)

Example on Supreme Court Wallace flour mills case and Vazir Sultan Tobacco case

Excisable goods				
	Product A	Product B	Product C	Product D
Rate of duty On 28.02.2009	8%	10%	Nil	Exempt u/s 5 A
Rate of duty On 01.03.2009	12%	4%	14% (Brought to Duty)	11% (Exemption Withdrawn)
Duty Payable	12%	4%	14%	11%
Wallace flour Mills (SC)				

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Excisable goods				
	Product A	Product B	Product C	Product D
Rate of duty On 28.02.2009	8%	10%	Nil	Exempt
Rate of duty On 01.03.2009	12%	4%	14% (Brought to Duty)	11% (Exemption Withdrawn)
Date of removal	01.03.2009	15.03.2009	31.03.2009	21.04.2009
Rate of Duty on the date Of removal	12%	6%	12%	10%
Duty Payable	12%	6%	12%	10%
Wallace flour Mills (SC)				

Vazir Sultan Tobacco case

Non Excisable goods		
Product A		
Rate of duty On 28.02.2009	Not Applicable	Because non excisable goods. Not mentioned in tariff.
Rate of duty On 01.03.2009	14%	First time bringing to excise tariff as Dutiable goods.
Opening stock of F G On 28.02.2009	500 units	No duty payable on 500 units when they are removed on or after 01.03.2009
Manufactured Goods from 01.03.2009	All units	14% duty payable on removal
Vazir Sultan tobacco (SC)		

Goods not included in CETA are 'non-excisable goods' - Some goods like wheat, rice, cut flowers, horses, etc. are not mentioned in Central Excise Tariff at all and hence they are not 'excisable goods', though they may be 'goods'. These are 'non-excisable goods'. Similarly,

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'waste and scrap' will be 'excisable goods' only if specifically mentioned in CETA - **CCE v. Amol Decalite Ltd. 1999(CEGAT)**. In **Western India Ceramics P Ltd. v. CCE 1998 (CEGAT)**, it was held that broken glazed tiles are not excisable as there is no specific entry (in Tariff) for it.

Mere mention in CETA not enough - Mere mention in the Excise Tariff will not attract duty, unless these are 'goods' i.e. unless test of marketability is satisfied - **Bhor Industries Ltd. v. CCE 1989 (SC)** Further, the 'excisable goods' are liable to duty only if they are 'manufactured' or 'produced'.

Goods on which appropriate duty has been paid – If an exemption notification uses the words 'on which appropriate duty has already been paid', it means that on which excise duty has, as a matter of fact, been paid and has been paid at 'appropriate' or correct rate. Thus, it cannot cover goods on which in fact, no duty has been paid. - **CCE v. Dhiren Chemical Industries 2002 SC**

Goods excisable even if duty is nil – If by virtue of an exemption notification, the rate of duty is reduced to NIL, the goods specified in the tariff would still be regarded as excisable goods on which NIL rate of duty was payable.

Goods removed under bond are not 'exempted goods' - Under Central Excise, the term 'exempted goods' has specific meaning. 'Exempted goods' means those exempted under notification issued u/s 5A of CEA. Goods removed under bond without payment of duty are neither goods 'exempt from duty' nor 'goods chargeable to nil rate of duty'. - **CBE&C circular No 278/112/96-CX dated 11.12.1996** -

Goods manufactured in SEZ are 'excluded excisable goods' – As per section 3(1) of CE Act, as made effective w.e.f. 15-8-2003, duty is leviable on all excisable goods (except goods manufactured or produced in Special Economic Zone). Thus, goods manufactured or produced in SEZ are 'excisable goods' but no duty is leviable, as charging section 3(1) excludes those goods. Thus, the goods manufactured in SEZ are not 'exempted goods'. They can be termed as 'excluded excisable goods'.

'Goods which have suffered duty' - In some cases, the wording used is 'goods which have suffered duty / tax'. In such case, it has been held that actual payment of tax / duty is necessary. Goods cannot be said to have 'suffered tax' when no tax is paid. - **State of MP v. Indore Iron & Steel Mills 1998 SC**.

What are "Goods" - Some examples will clarify the legal position.

Gas, Steam etc - As it is a tangible property marketable steam is 'goods' as it can be weighted, measured and marketed - **Ambalal Sarabhai Enterprises Ltd. v. UOI 1991 (Guj) HC**

Electricity: Electricity is movable property though it is not tangible. It is 'goods' State of Andhra Pradesh v. National Thermal Power Corporation (NTPC) 2002 (SC).

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Drawing, designs Etc: Even if payment is made for technical advice or information technology, which is intangible asset. Knowledge in the form of drawing and design relating to machinery are 'goods' **Associated Cement Companies Ltd. v. CC 2001 (SC 3 member bench)**

Machinery Will be 'goods' if it is in marketable condition at the time of removal from factory of manufacture, even if subsequently, it is to be fastened to earth

Branded Software: Branded software like lotus, oracle can be bought off shelf hence they are goods **TCS(AP HC)**

Waste and Scrap- Waste, Scrap would be liable to duty, if it has an established market and mentioned in tariff- **Khandelwal Metal and Engg Works v. UOI - 1985 (SC) CCE v. Hindustan Lever 2003(151) ELT 10 (SC).**

Aluminum paint having shelf life of 8 to 10 hours is marketable and it found that similar products are available held as goods and duty is payable -**TNSTC LTD (2004)166ELT433**

Columns: Columns fabricated at a place and removed to another place for erection, are goods since they are movable at the time of removal. **Associated Cement Companies Ltd. v. CC 2001 151ELT3(SC)**

What are not "Goods" - Some cases where the product was held as not 'goods' are illustrated here.

Goods having very short life are not 'goods', if not marketable in that short period – Yeast having short shelf life is not 'goods' when there is no proof about its marketability, even if the product is specified in tariff. **CCE v. Jagjit Industries 2002 (SC)/Famous Cine laboratory 66ELT91(SC)**

Ropeway erected – Ropeway erected for carrying passenger in trolley system is not movable. Hence it is not goods.

Lift – Lift comes to existence only after it is installed with the building. There after it becomes functional. It is immovable and hence not goods.-**Otis Elevators Co. India Limited 2003 151ELT499 (HC)**

Storage system Installed at a site: it is permanent fixture and cannot be removed from the place of installation. Hence it is not goods – **Nikhil Equipments Pvt. Limited (2004) 165ELT 487 (SC)**

Zinc scaling and Zinc Flux arising out of galvanizing of steel sheets are no doubt saleable, but mere saleable market does not exist and hence not goods and no duty liability Tisco **(2004) 165ELT386(SC)**

Aluminum Cans and Torch Bodies: Aluminum Cans and Torch Bodies were made by extrusion process are intermediate form in crude form and cannot be marketable and hence not a goods - **Union carbide India Limited (1986) 24ELT214 (SC)**

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Waste and scrap arising out of breaking up of old and worn out machinery is not goods

Cannot be considered as goods and that the waste and scrap arisen out of the process of manufacture in terms of Sec. 2(f) of Central Excise Act, 1944. [CCE, Visakhapatnam v. Sree Vijayarama Gajaphthi Co-operative Sugars Ltd. Hyderabad] [2004 (117) ECR 753 (T)]

Excitability of plant & machinery assembled at site

CBEC Circular dated 15.01.2002 – The circular was issued based on judgment of Triveni Engineering case dated 8-8-2000; hence, the present legal provision is, as below

- (a) Duty cannot be levied on immovable property. Duty can be levied on parts and components leaving the factory according to condition they removed.
- (b) If plant is so embedded to earth that it is not possible to move it without dismantle, no duty can be levied.
- (c) If machinery is superficially attached to earth through foundation by way of nuts and bolts for operational efficiency, it is not an immovable property and can be easily removed without dismantling, duty is leviable
- (d) When the parts and Components are fixed and installed in such a way where the final article is comes into existence only in shape of immovable property no duty leviable.
- (e) Where the plates, Channels taken to site for fabrication, say for tank, is done at site and it is lifted and placed in a position permanently attached to earth, the tank come in existence as a goods. However if piece by piece attached to earth for the tank comes in existence, it would be immovable property.
- (f) Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable.

Plant and Machinery or structure assembled and erected at site cannot be treated as 'goods' for the purpose of Excise duty, if it is not marketable and movable.

It was held Goods erected and installed in the premises and embedded to earth cease to be goods and cannot be held to be excisable goods. - **QualitySteel Tubes(P.) Ltd. v. CCE - 1995 (SC)** - in this case, it was held that tube mill and welding head erected and installed in the premises and embedded in the earth for manufacture of steel tubes and pipes are not 'goods'.

Assembly at site is not manufacture, if immovable product emerges - In Mittal Engg Worksv. CCE - 1996 (SC), it was held that if an article has to be assembled, erected and attached to the earth at site and if it is not capable of being sold as it is, without any thing more, it is not 'goods'. Erection and installation of a plant is not excisable - followed in **CCE v. Hyderabad Race Club - 1996 (SC)**, where it was held that an article embedded in the earth was not 'goods' and hence excise duty is not leviable.

Dutiability of steel structures - **In Mahindra & Mahindra Ltd. v. CCE 2005 (190) ELT 301 (CESTAT)**, it has been held as follows – Immoveable

iron and steel structures are not goods

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Structures and parts mentioned in parenthesis of 7308 like bridges, lock-gates, towers, trusses, columns frames etc., in their movable state will be subject to excise duty, even if latter they get permanently fixed in the structures

Plates, rods, angles, sections, tubes and the like, prepared for use in the structures will also be excisable goods subject to duty in their pre-assembled or disassembled state.

Examples of plant and machinery which are not excisable

Following are some examples where the article is not goods, and duty is not payable.

- Huge tanks, erected at site, stage by stage, which cannot be physically moved without dismantling.
- Lifts and escalators installed in building cannot be treated as excisable goods, even if that item is specified in Tariff. However, if lift and escalator is fabricated as a whole and is movable in nature, it will be dutiable even if temporarily installed at construction site or exhibition.
- Steel structure fabricated and erected at site
- Weigh Bridge assembled at site
- Refrigeration equipment fitted at site
- Aerial ropeway

2. Case studies in Intermediate Product Captive Consumption

Intermediate products manufactured and used within the factory for manufacture of final products are exempt from duty, even if CT-3 certificate is not issued and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules [earlier Chapter X] procedure is not followed, subject to the condition that documents/records are available with manufacturer that the intermediate goods have been used for export purpose only - **CBE&C circular No. 229/63/96-CX dated 8-7-1996, amended vide 303/19/97-CX dated 11-3-1997.**

Exemption to captive consumption if duty paid on final product: The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (a) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit or (b) Used for in or in relation to manufacture of final products eligible for Cenvat, made from inputs which are eligible for Cenvat. **[Notification No. 67/95 dated 16-3-1995].**

Once a new product comes into existence at intermediate stage, it is charged to duty if not exempted under any notification. **In A S Processors v. CCE 1999(112) ELT 706 (CEGAT)**

Duty liability on intermediate product arises as soon as manufacture (of intermediate product for captive consumption) is complete as it is 'deemed to have been removed' under rule 9(1). **In CCE v. Modern Mills 1999(113) ELT 822 (CEGAT)**

Duty payable even if intermediate product used in continuous process - Duty would be payable even if such intermediate product is used in same factory in a continuous process. As per Explanation to rule 9, excisable goods consumed as such or utilised for manufacture of any other

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commodity shall be deemed to be removed from the place just before such consumption or utilisation. **JK Spinning v. UOI- 1987 (32) ELT 234 (SC).**

Movability, marketability and Excisability to satisfy to attract duty: Bhor Industries Ltd. Vs. C.C.EX. (1989) (40) ELT-280 has held that an intermediate product would be excisable only if it is a complete product in the sense that it is capable of being sold to a consumer. Thus marketability is essential for charging an article to duty. Therefore where the intermediate product is not capable of being sold it is not dutiable even if it is included in the Tariff Entry. In other words intermediate goods will be chargeable to duty under law only if the test of marketability is met

It was held that mere theoretical possibility of marketability is not enough if the method is uneconomical and is hardly likely to be employed by the trade. **South Bihar Sugar Mills Ltd. v. UOI 2 ELT J 336 (SC)**

No sales tax on captive consumption - 'Consumption' does not mean 'sale' and hence sales tax is not attracted - **Bhopal Sugar Industries Ltd. v. D P Dube, STO (1963) 14 STC 406 (SC)**

Burden of proof of marketability of intermediate product is on department - Burden of proof of marketability of intermediate product is on the department. - **Cadila Laboratories v. CCE 152 ELT 262 (SC).**

Duty on manufacture not on sale A duty of excise is a tax upon goods and not upon sales or proceeds of sale of goods. In terms of Entry 84, List I of Seventh Schedule to Constitution, taxable event in respect of excise is manufacture or production - **CCE v. Acer India Ltd. 172 ELT 289 (SC).**

Duty leviable on captive consumption if goods are marketable: - Since excise is a duty on manufacture, duty is leviable even if goods are consumed within the factory and not sold. However, the goods must be marketable in the condition in which they are manufactured and further consumed within the factory. **Ambalal Sarabhai Enterprises v UOI.**

Movability marketability and excisable all the three conditions should be satisfied for levy of excise duty in case of captive consumption/intermediate product

The Tribunal, in **Hindustan Lever Ltd. Vs. C.C.EX. (1990) (30) ECR-180**, has held that intermediate goods which are not sold nor are marketable, are not excisable and that the burden of proof regarding marketability is on the Revenue.

It was held that once a new marketable intermediate product comes into existence, it is to be charged to duty if not exempted by a notification - **CCE v. Citric India 2001(127) ELT 539 (CEGAT)/ A S Processors v. CCE 1999(112) ELT 706 (CEGAT),**

No duty is payable on intermediate product if final product is cleared for export under bond without payment of duty. Circular No. 10/75-CX 6 dated 3-4-1975, issued by Ministry of Finance confirms that goods exported under bond cannot be treated as exempt from duty or chargeable to nil rate of duty - **CBE&C circular No 278/112/96-CX dated 11.12.1996] & Orissa Synthetics Ltd. v. CCE 1995 (77) ELT 350 (CEGAT). Same view in Indian Aluminium Co. Ltd. v. CCE 1995 (79) ELT 111 (CEGAT).**

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Aluminium cans or torch bodies manufactured (for final manufacture of torches) are in elementary and unfinished condition and are not marketable. Hence, 'Aluminium cans' are not goods and no duty is payable on those intermediate products - **Union Carbide India Ltd. v. UOI 24 ELT 169 (SC)**

Where it was held that an intermediate product must be capable of being sold, if duty is to be levied. It should be a distinct article having identity in commercial world. **Porritts and Spencer (Asia) Ltd. v. CCE-106 ELT 18 (SC),**

Plastic body manufactured for Mosquito repellent captively consumed not marketable

The assessee was manufacturing Electro Mosquito Repellent). EMR was exempt from duty, but department demanded duty on plastic body manufactured which was captively consumed to manufacture EMR. It was held that plastic body of product (EMR) and used within the factory is not a standardized item and is not available in the market for being bought and sold. The design of plastic body is different from that of other manufacturers and it is not available in market as it is not a commercially known product. Hence, it is not 'goods' and not marketable. **UOI v. Sonic Electrochem 45 ELT 274 (SC),**

Agarbatti mix' (odoriferous compound) arising during course of manufacture of Agarbatti is trade secret of each manufacturer. It is used in continuous process and never sold. Hence, it is not excisable. - **CBE&C circular No. 495/61/99-CX.3 dated 22-11-1999.**

Assessee was manufacturing tyre bead wire rings, which were captively consumed. It was found that these are not marketable. Hence, it was held that no excise duty is payable. **CCE v. Metro Tyres 2005 (179) ELT 493 (CESTAT)**

The commodity which is sought to be made liable to excise duty must be a commodity that is marketable as it is, and not a commodity that may, by further processing, be made marketable - **UOI v. DCM 92 ELT 315(SC) Wochardt Ltd. v. CCE 1999(105) ELT 573 (CEGAT)**

3. Case Laws regarding Manufacture- on first part process incidental ancillary

Assembly of components of air conditioner in car does not amount to manufacture as the parts are fitted at various places and at no point of time a car air-conditioner as a separate and distinct commodity comes into existence. Similarly, fitting of air-conditioner kit in a car does not amount to manufacture - **CBE&C Circular No. 479/45/79-CX dated 17-8-1999.**

Manufacture as defined by Courts - Some important Court decisions are discussed here.

New substance having distinct name, character or use must emerge - In **Union of India v. Delhi Cloth Mills Co. Ltd. (SC) 1990** has held that the manufacture means bringing into existence a new substance. (This is a very important and leading case regarding definition of 'Manufacture'). Manufacture is end result of one or more processes, through which original commodity passes. Thus, manufacture implies a change but every change is not manufacture. A new and different article must emerge having a distinctive name, character or use.

In the course of processing If a new and commercially different identifiable product does not result, there is no manufacture and hence excise duty liability does not arise.- **Hyderabad Industries Ltd. v. UOI - 1995 (SC) 1995 (For example cutting of wood in small pieces or making small pieces of a long steel bars would not amount to manufacture as no new product emerges).**

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Mere mention in tariff does not mean manufacture – It was held that even if an article is specified in tariff, there is no duty liability unless it is ‘manufactured’. In **CCE v. Markfed Vanaspati 2003(153) ELT 491 (SC)**

Trade Parlance is important – It was held, the test is whether in the eyes of those dealing in the commodity or in commercial parlance, the processed commodity is regarded as distinct in character and identity from the original commodity - **Sterling Foods v. State of Karnataka - 1986 (SC)**. Similar view held **Aditya Mills Ltd. v. UOI (1989) (SC)**.

Mixing of spices in to compound is manufacture

Assessee is engaged in mixing of saffron, spices, menthol etc. to form a “Compound (Kimam)”. The said compound cleared and it is diluted and used in manufacture of (branded chewing tobacco) the assessee claimed that the “Compound (Kimam)” is an intermediate item, not marketable is such and was, therefore, not excisable

It was held kimam intermediate product is marketable, as the same was manufacturing the other companies are marketing the same., the assessee aware the fact and hence 5 years time limit for demand apply **Dharampal Satyapal 2005 SC**

Scrap iron ingots Converting in to Rolled steel section : it was held it is a vital process were converted into rolled steel sections, it was held that the scrap iron lost its identity and became a new marketable product having a different use - **Devidas v. State of Punjab (SC)**.

Curing: This is a process, which amounts to manufacture. Hence curers are liable to pay excise duty. Example Coffee curers liable to pay excise duty

Cutting of jumbo rolls of typewriter to make ribbon of standard length and Winding on spool is ‘manufacture’ - it was held that conversion of jumbo reels of ribbons into spool form to suit particular model and make of typewriting/telex machine is ‘manufacture’ as new and distinct product emerges – **Kores India v. CCE (2004) 174 ELT 7 (SC)**.

Where pineapple fruit was canned involving a certain degree of processing namely that inedible portions were removed and edibles were sliced and sugar was added to preserve it, it was held that these series of changes did not take the commodity to the point where commercially the pineapple can be recognised as a new and distinctive article and hence there was no manufacture - **AIR 1980 (SC) 1227**.

When logs of wood were converted into different shapes and sizes by sawing them in the saw mill it was held that there was no intention to bring about a new article, the result of cutting them into different shapes and sizes being only to facilitate convenience of transport and storage - **Ganesh Trading v. State of Haryana [AIR (1974) SC 1362]**.

On the other hand if logs were converted into planks, railway sleepers, etc., different items of specific goods was held to emerge - **State of Orissa v. Bharat Saw Mills [(1981) ECR 93 D]**.

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-Combining steam engine turbine and alternator by fixing them on platform and aligning them is manufacture, as new product comes into existence which has a distinctive name and use different from its components. **Triveni Engineering v. CCE 2000 (120) ELT 273 SC.**

Cutting of Jumbo rolls of tissue paper in to standard size for table cloth, face cleaning and toilet purpose is not manufacture.

It was held that “the characteristics of table napkins, facial tissues and toilet rolls in terms of texture, moisture absorption capacity, feel etc. ARE THE SAME as the tissue paper in the jumbo rolls. The said jumbo rolls cannot be conveniently used for household or for sanitary purposes. Therefore, held the process is not a manufacture **SR Tissues Private Limited 2005 SC**

Plain glazed tile to decorated tiles is not manufacture - Processing of duty paid plain glazed tiles into decorated ceramic tiles does not amount to manufacture as no new distinct and commercial commodity comes into existence. - **Pan Pipes Resplendents Ltd. v. CCE 2000(119) ELT 603 (CEGAT)/ CCE v. Pan Pipes Resplendents Ltd. 2006 (193) ELT 129 (SC)**

Laminating/metallising film is not manufacture- laminating/metallising of duty paid film does not amount to manufacture as film remains a film and no new and distinct product comes into existence **In Metlex (I) P Ltd. v. CCE 2004 (163) ELT 129 (SC),**

Merely by adding water, perfume and colour to the liquid soap, it cannot be said that a manufacturing process was undertaken because by these additions what resulted merely a change in the original substance and not altogether a new and different substance with a distinct name, character or use came into existence - **Colgate Palmolive v. Union of India (1980 ELT 268).**

When pig bristles purchased from market were boiled, washed with soaps and chemicals and sorted out according to their size and colour, there is no manufacture of goods. There is no essential difference in identity between the original commodity and the processed commodity, notwithstanding application of labour through machinery - **C.S.T. v. Harbilas Rai [21 STC 17 (SC)].**

4. Case Laws regarding Deemed Manufacture

Deemed manufacture was tested and constitutionally it was upheld. **Empire Industries Vs UOI (SC) 1985 20 ELT 179**

Process may be mentioned in Tariff Entry also, but it must be specified that the process amount to ‘manufacture’- The Tariff Entry read as ‘Fixed Vegetable Oil, which has undergone process of treatment of alkali, bleaching or deodorization’. However, mere mention of process in Tariff Entry is not sufficient, it must be specifically stated that a particular process ‘amounts to manufacture’. Since the Tariff Entry did not specify that the

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process 'amounts to manufacture', it cannot be held as 'deemed manufacture'. **Shyam Oil Cake v. CCE 2004 (174) ELT 145 (SC),**

Deeming manufacture will not apply if there is no value addition: The purpose of deeming provision is only to tax high value additions. No manufacture if no value addition. - **Lakme Lever Ltd VS CCE (1999) 110ELT899(CEGAT)**

Mere putting the name of goods, name of consignor is not labeling: It was held painting the consignor name, name of goods is not labeling, as it has not containing any thing with regard to price, qty description of the product. **Texchem Vs CEC (2003) 151ELT610(CEGAT)**

Putting Stickers indicating MRP. Putting stickers on the imported medicines to provide information as per Drug and Cosmetics Act is amount to manufacture **CBEC Circular No 576/12/2001 dated 16.05.2001. However there is a contrary view held in**

1. Putting label name and address of manufacturer and MRP on imported chocolates is not a manufacture –**Lal International Vs CCE (2003) 154ELT520 CEGAT**
2. Putting label name and address of manufacturer as required under standard weights and measures act is not a manufacture. **CCE Vs Pancheseel Soap factory (2002) 145 ELT 527 CEGAT**

Re-packing of defected and damaged goods is not manufacture – Mere re-packing is not 'deemed manufacture'. If goods returned are re-packed, such re-packing is from one retail pack to another retail pack and hence cannot be termed as 'manufacture'. - - Similarly, if goods returned for rectification are re-packed, it is not 'any other treatment to render the product marketable', as the product was already marketable. **Ranbaxy laboraties VS CCE (2004) 168ELT 321 (CESTAT)**

Repacking from bulk to retail only cover: Obtaining Ammonia gas through tanker and filling in to cylinders is not manufacture- Obtaining gas in tanker is not amount to obtaining in bulk packet. **Ammonia Supply Co VS CCE (2001) 131ELT626(CEGAT).**

Test of Marketability will be applicable: Even it is deemed manufacture, if the process does not the makes the goods marketable, it is not a manufacture **Sri Ayyanna Vs CCE (2004) 165ELT425 (CESTAT)**

Case studies on Packing and Labeling

'When 'repacking and labeling" will amount to manufacture - In some cases, goods are bought in bulk and sold in retail. This will not amount to 'repacking'. Generally, the expression 'packing' is considered as a package containing pre-packed commodity and quantity of the product contained therein is also pre-determined. - . - Activity of simply transferring material from one container to another may not come under the description 'repacking and labeling'. However, facts should be ascertained and decision should be taken based on all relevant facts- **CBE&C circular No 342/58/97-CX dated 8.10.1997.**

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Mere packing is not a manufacture; The products would have to be repacked from **bulk packs to retail packs** so as to make them marketable to the consumer for the activity to be termed as 'manufacture'. The Apex Court stated that the medicines were imported as ready to market retail packs which were then affixed with stickers containing certain information. In the opinion of the Supreme Court, there was no evidence of assessee indulging in any further activity which amounts manufacture. **CCEx., Mumbai v. Johnson & Johnson Ltd.**

2005 (188) ELT 467 (SC)

Process of printing of cotton bed sheets, pillow covers and bed covers be considered as an integral part of the manufacture of such bed sheets etc

There is exemption notification for manufacture of textile articles without aid of power. Assessee manufactured bed sheets, pillow covers and bed covers, however printing was used with colour mixing machine, Held printing colour is integral part of manufacture, hence benefit of notification will not apply. **Impression Prints v. CCEx., Delhi-I 2005 (187) ELT**

170 (SC)

Mere repacking is not deemed manufacture -Repacking has to be from bulk packs to retail packs so as to render product marketable directly to consumer. It was also held that if product is imported as ready to market retail packs, mere affixing the sticker containing information like names and addresses of importer, MRP etc. will not be 'deemed manufacture'. **CCE v. Johnson & Johnson 2005 (188) ELT 467 (SC),**

Both repacking and labeling required for applicability of the provision

There was a view that in many 'deemed manufacture' provisions, the wording used is 'labelling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable to the consumer'. Since the word used is 'and', mere labelling without re-packing is not 'deemed manufacture', as activities of labelling/re-labelling and re-packing in small packs are inter-dependent and not mutually exclusive.

All re-packing not covered

The words used in many 'deeming provisions' are 'repacking from bulk packs to small packs'. Thus, in such cases, mere re-packing is not 'deemed manufacture'. If goods returned are re-packed, such re-packing is from one retail pack to another retail pack and hence cannot be termed as 'manufacture'.-- Similarly, if goods returned for rectification are re-packed, it is not 'any other treatment to render the product marketable', as the product was already marketable.

Goods Removed without printing MRP Some times, a manufacturer of goods (which are covered under MRP provisions) clears goods from factory in bulk without putting MRP at the time of clearance. Duty is paid on basis of section 4. The goods are packed and labeled and MRP is put either by the buyer who buys the goods or in some godown or depot or C&F Agent of the manufacturer. Now, the process carried out by the buyer or by C&F Agent or at such depot or godown of manufacturer will be 'manufacture'. Such depot/buyer/C&F Agent/godown will have to be registered under Central Excise as 'manufacturer'.

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Pouring of Chemicals from Big to Smaller container cannot be considered as manufacture

Chapter notes of CETA specify repacking for chemicals. Pouring from big to smaller containers cannot be considered as repacking hence not a manufacture. **MEENAKSHI & CO.**

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5. Case studies on manufacturers

Raw material Supplier is not the manufacturer - It is common in Industry to supply raw material to a Job Worker or Processor and get the goods manufactured from him in his factory for example, Automobile Manufacturers very often get many parts manufactured from outside on 'Job Work' basis. In such cases, they will not be treated as 'Manufacturer' even if they supply the Raw Material and they retain right of rejection.

However in the following cases Raw material supplier is manufacturer

1. Relation between Manufacturer and raw material supplier is on agency basis- **Shree Agency Vs Bhattacharya** 1ELT168 (SC)
2. Person Employed by raw material supplier and goods return it to him –**Bajrang gopilal** 1986 25ELT609 (SC)
3. Labour doing work allotted to them under the supervision of Principal- **Interscape Vs CCE** (2001)135ELT942CEGAT
4. Job worker function like a hire labour and there is no principal to principal basis- **Light Metal Extrusion Ltd., Vs CCE** (1997) 89ELT581 (CEGAT)
5. Job worker is not doing job on their own account and they are dummy and bogus units and arrangement made in such a way to evade duty- **B S Rajasekar Vs CCE** (1993)63ELT369 CEGAT

Brand Owner is not the Manufacturer - Some large units get their goods manufactured from others under their Brand Name, instead of manufacturing it themselves. Companies will not be treated as 'Manufacturer' even if they exercise quality control, or allow use of their brand name, or provide financial help to the small manufacturers, or even supply the raw material, if their relation with the manufacturer is 'Principal to Principal' basis. Supreme Court in **Cibatul Ltd. v. UOI - 1978 (SC)** - have held that if the goods are produced with Customer's brand name under his quality control, it does not mean that the Customer is the Manufacturer. Same view was reaffirmed in it. **Secretary to Government of India v. Food Specialties Ltd. - 1985 (SC).**

Brand name owner will not be manufacturer even if he supplies raw material. - **Philips India Ltd. v. UOI - 1980 (6) ELT 263 (All HC)** – same view followed in **Cheryl Laboratories v. CCE - 1993 (65) ELT 596 (CEGAT).**

Person who gives machine on hire basis is not a manufacturer -**PSG Industrial Institute Vs CCE**1999 (111)ELT528CEGAT

Loan licensee (A person who has licence to produce the drug) under drug control act is not a manufacturer

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Sub-contractor is manufacturer if relation to the main contractor is on principal-to-principal basis, even when job work is done at site, if relationship between sub-contractor and main contractor is on principal-to-principal basis. - **Voltas Ltd. v. CCE 2002 (CEGAT)**.

Manufacture at site of buyer - An independent contractor who assembles the parts in a factory would be the manufacturer and not the owner of factory- **Basti Sugar Mills v. CCE 2000 (CEGAT)** [In this case, contractor assembling the parts was independent contractor appointed by supplier of parts of crane. Obviously, he was not 'hired labour' of the factory owner.] – Same view in **Solid and Correct Engineering Works v. CCE 2002 (CEGAT)**. In this case, the marketing company assembled various parts at the site of buyer. It was held that the marketing company is the manufacturer.

Job Worker is a Manufacturer and A Contractor is a manufacturer. A person who engages hired labor is a manufacturer.

Persons who manufacture under franchise are a manufacturer- For example if Cola companies supply concentrates to bottlers and cool drinks manufactured by bottler, the Bottler is a manufacturer.

Person who transforms commodity in to another commodity having distinct name and character is manufacturer- **Pearl Soap Co Vs CCE (2001) 138 ELT 1317 CEGAT**

6. Case studies on duty Liability

Duty Liability is on the Manufacturer: The liability to pay duty is on 'Manufacturer or producer'. Duty cannot be recovered from his purchaser **Mahindra & Mahindra Ltd. v. CCE - (1983) (CEGAT)** (though the manufacturer may recover the same from buyer). Hence, Excise demands, if any, are always raised on manufacturer and recovered from manufacturer. Hence, it is essential to decide who is to be termed as 'Manufacturer'.

It has been held that excise duty is on 'manufacture and production of goods' and liability to pay duty is not dependent upon whether the manufacturer is owner or not- **Ujagar Prints v. UOI - AIR 1989 (SC)**,

Ownership of raw material is not relevant for duty liability - Ownership of raw material is not relevant for duty liability - **Hindustan General Industries v. CCE 2003 (155) ELT 65 (CEGAT)** * **CCE v. Mahindra & Mahindra 2001(132) ELT 632 (CEGAT)**..

A duty of excise is a tax **upon goods and not upon sales or proceeds of sale of goods**. In terms of Entry 84, List I of Seventh Schedule to Constitution, taxable event in respect of excise is manufacture or production - **CCE v. Acer India Ltd. 172 ELT 289 (SC 3 member bench)**.

Duty incidence on manufacture it was observed that incidence of excise duty is directly relatable to manufacture, but its collection can be deferred to a later stage as a measure of convenience or expediency. **McDowell and Co. Ltd. v. CTO 59 STC 277 (SC)** Same view in **Mohan Breweries v. CTO 1997 AIR (SC)**

It was held that the procurer is not entitled to SSI exemption in respect of procurement of

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khandsari sugar. **CCE v. Dee wan Modern Breweries 2001 128 ELT 390- same view in CCE v. Dogra Distilleries (2001) 137 ELT 887 (CEGAT).**

Duty liability in case of job work - Even in case of job work, the duty liability is of actual manufacturer and not of the raw material supplier.- CCE v. Globe Auto Agency 2003 (157) ELT 202 (CESTAT) * GTC Industries v. CCE 2001(132) ELT 74 (CEGAT). However, a job worker manufacturing goods under notification No 214/86 is exempt from excise duty, as the raw material supplier undertakes that he will use these goods further to manufacture final product or clear for export or pay duty on such goods.

Duty payable even goods given free replacement given during warranty period - Since excise is a duty on manufacture, duty is payable whether or not goods are sold.

In it was held that duty is payable on spare parts even if those are supplied free during warranty period. **Bharat Heavy Electricals v. CCE 2003(154) ELT 10 (SC) - followed in ECE Industries v. CCE 2004 (164) ELT 236 (SC).**

Duty on free samples

It was held that excise duty is payable on Physician's samples given free Jawa Pharmaceuticals v. CCE 2003 (158) ELT 166 (CESTAT) Crosslands Research Lab v. CCE 2002(150) ELT 212 (CEGAT).

Duty cannot be Recovering from customer Buyer not liable to pay duty provision prohibiting recovery of tax from purchaser was upheld. **K M Mohamed Abdul Khader Firm v. State of Tamilnadu (1985) 58 STC 12 (SC)**

Duty can be levied on Government undertaking - As per Articles 285 and 289 of Constitution, **tax cannot be** levied by Central Government on income or property of State Government (and vice versa). It was held that this restriction applies only to taxes which directly affect income or property, and not to taxes which may indirectly affect income or property. Thus, excise duty can be levied on goods manufactured by State or Central Government undertakings -Karya Palak Engineer v. Rajasthan Taxation Board 2004 AIR (SC).

Duty payable even when not collected

An assessee is liable to pay sales tax and the question whether he has collected it from consumer or not is of no consequence. His liability is by virtue of being an assessee under the Act. - American Remedies P Ltd. v. Govt of AP 1999(113) (SC 3 member bench). The same is applicable for excise duty also

Remission of duty can be granted for handling losses

The CESTAT held that even though rule 21 of the Central Excise Rules, 2002 does not specifically mention handling, remission of duty would be permissible for handling losses as the reference in the rule to "unavoidable accident at any time before removal" would cover handling. **J.K. Sugar Ltd. v. CCEx., Meerut 2005 (185) ELT 300 (Tri.-Del.)**

Theft of goods is loss due to unavoidable accident. Hence, remission of duty is allowable. **CCE v. GTC Industries Ltd. 1994 (71) E.L.T. 806 (T).** Sialkot Industrial Corporation v. UOI 1979 (4) E.L.T. J329, the Delhi High Court However contrary decision in CCE v.

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International Woollen Mills 1987 (28) E.L.T. 310 (T).

Loss of molasses due to auto combustion is an unavoidable accident and remission is admissible. **Shankar Sugar Mills v. CCE 1994 (71) E.L.T. 753 (T)**

Remission of duty should be granted even if it could be argued that the loss could have been prevented. **Purna Sahakari Sakhar Kharkhana Ltd. Vs CCE 1998 (100) E.L.T. 513 (T)**

Remission of duty is grantable though the assessee has received compensation for fire accident **Sarada Plywood Industries Ltd. v. CCE 1987 (32) E.L.T. 116 (T)**

II- Case laws on Classification

RULES TO BE APPLIED SEQUENTIALLY – The Rules are to be applied sequentially. . Classification is to be first tested in light of Rule 1. Only when it is not possible to resolve the issue by applying this rule, recourse is taken to Rules 2, 3 and 4 and so on. - **Chapter 4 para 7 of CBEC manual 2001.**

Rule 1 gives primacy to the Section and chapter notes along with terms of the headings. They should be first applied. If no clear picture emerges, then only one can resort to subsequent rules - **CCE v. Simplex Mills Co. Ltd. 2005 (181) ELT 345 = 140 STC 125 (SC 3 member bench).**

Section Notes and Chapter Notes have overriding effect

It was held that section notes and chapter notes, being statutory in nature, have precedence over functional test and commercial parlance for purposes of classification. **Fenner (India) Ltd. v. CCE - 1995(97) ELT 8 (SC),/ Saurashtra Chemicals, Porbunder v. CC - 1986 (CEGAT).& Tractors and Farm Equipments Ltd. v. CC - 1986 (CEGAT).**

Sub-assemblies of air conditioning machines removed in CKS/SKD packs will be classified as complete machine, if it contains essential elements of air conditioning machine. - – **CBEC circular No. 666/57/2002-CX dated 25-9-2002.**

A manual is supplied along-with software. The manual gives instructions as to how to use the software. Here the 'essential character' is 'software'. Hence, the goods will be classified according to 'essential character' as per rule 3(b). - **CBE&C circular No. 528/10 6/93-Cus (TU) dated 24-8-1993.**

Fan regulators cleared as such be classified: as parts/accessories of fan and not a as fans

Fan regulators which are not cleared with electric fan but are cleared as such would be classifiable as parts/accessories of fan and not under fans. The Supreme Court held that if regulators have to be classified under 'electric fans' whether sold with fan or separately, then no part or accessory would be covered under sub-heading. **North West Switchgear Ltd. v CCEx., New Delhi 2006(195) ELT 134 (SC)**

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Machinery independent even if it can be attached to another - Machinery can be independent even if it is connected to machinery. Mere fact that a machinery can be connected to another machinery does not change its character to accessory - **Nirulas Corner House P Ltd. v. CC 1999(108) ELT 332 (SC)**.

Specific to be preferred to general as held in case of **Plasmac Machinery Mfg Co. Ltd. v. CCE 1991 (51) E.L.T. 161 (S.C.)**

Condition at the time of import/clearance relevant - Condition of the material at the time of importing is a material factor for purpose of classification as to the head under which goods will be classified - **Dunlop India Ltd. v. UOI - 1983 SC**.

Classification of standalone items

Assessee cleared compressors falling under tariff sub-heading 8414.10. They also cleared to its buyers separately "fly wheel" under separate tariff sub-heading 8483.00, "safety valve" under separate tariff sub-heading 8481.80 and "filter" under separate tariff sub-heading 8421.00. Department contend that the compressor removed in unassembled form and hence to be classified as compressor as per rule 2(a).

Held that "Compressors manufactured by assessee removed as a **"stand-alone"** item and not in an unassembled or disassembled condition, hence, no question of applying General interpretative Rule 2(a) arises. Clearance will be treated as clearance of 3 independent items. **FRICKS INDIA LTD (2007)(SC)216ELT497**

Fax machine – If fax machine components are imported in ckd condition, it can be classified as fax machine only. However exemption of duty applicable to fax machine will not applicable to imported components- if components are imported it does not mean fax machine was imported- **Modi Xerox Ltd Vs CCE 2001 SC**

Hard Disk was imported with preloaded software. The cost of hard disk was Rs 65,000 and software was worth Rs. 67 lakhs . It was held hard disk is only a container and essential character is software. Hence it should be classified as software only. -**RPG India Ltd Vs CCE (2000)116 ELT 6 (SC)**

Trade parlance theory applicable only when classification rule does not provide correct and conclusive answer **CCE v. Wood Polymers Ltd. 97 ELT 193 (SC)**,

Wording of tariff description is essential: Meaning of word used in exemption notification has to be gathered from tariff description - **Steel Authority of India Ltd. v. CCE 1997(91) ELT 529 (SC)**. Chapter notes of chapter of CETA referred to in the notification have to be read as part and parcel of exemption notification - **Gujarat State Fertilizers Co. v. CCE 91 ELT 3 = SC** .

Exemption notification cannot determine classification and it cannot change classification of goods from one entry to another - **Eskeyef v. CCE 49 ELT 649 (SC)**.

End Use relevant only in limited cases - Generally, a product can be used for various purposes and it is not correct to classify the goods on the basis of its final use. It was held

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that end use is irrelevant for interpretation, unless definition so requires. **Dunlop India v. UOI - 1983 (13) ELT 1566 (SC)**

Steel racks specially designed for truck Mobile work shop cannot be classified as furniture

it was held that steel tables and steel cup-boards specially designed and fabricated by assessee to be fitted on a special purpose truck (mobile workshop) are necessary adjuncts of machinery fitted on mobile workshop and hence cannot be classified as 'furniture'. **Elgi Equipments v. CCE 2002(143) ELT 242 (SC)**

2002(143) ELT 242 (SC)

It was held that if a part solely or primarily suitable for automobiles will be classified as automobile part (under heading 87.08) and not under general heading. **G S Auto International v. CCE 2003 (152) ELT 3 (SC),**

Burden of proof Classification is on the department

the burden of proof that a product is classifiable under a particular tariff head is on the revenue and must be discharged by proving that it is so understood by the consumers of product in common parlance - **CCE v. Vicco Laboratories 2005 (179) ELT 17 (SC)**. Hindustan Ferodo Ltd. v. CCE 1997 (89) E.L.T. 16 (SC).

Relevancy of ISI Specifications : ISI specifications not relevant as compared to circulars issued by trade associations and statutory control orders. - **Indian Aluminium Cables Ltd. v. U.O.I. 1985 (21) E.L.T. 3 (S.C.)** ISI specifications not ignorable in the absence of any material - National Sales Corporation v. CCE 1995 (78) E.L.T. 653 (S.C.)

In trade parlance theory Customer's identity with function - have held that identity of a product is associated in mind of consumer with its primary function. The consumer buys an article because it performs a specific function for him. This mental association with a product is highly important for classification. Supreme Court, **Atul Glass Industries (P.) Ltd. v. CCE 25 ELT 473 (SC)**, Same view reiterated in **CCE v. Fusebase Eltoto Ltd. - 67 ELT 30 .**

The 'trade parlance' is relevant only when Statute does not define the words. If words are defined in the Statute, 'trade parlance' is not relevant. i.e. Statutory definition overrides Trade parlance theory-**Indo International Industrial v. CST, (SC)**.. Trade parlance theory applied only when classification rules does not provide conclusive answer. **CCE v. Wood Polymers Ltd. 1998 (97) E.L.T. 193 (SC)**

As per Trade parlance theory principle, a word in statute should be construed in its popular sense and not in the strict or technical sense. 'Popular sense' means that which people conversant with the subject matter with which the statute is dealing, would attribute to it. Supreme Court has confirmed this in various cases- **Dunlop India Ltd. v. UOI - (1976) (SC)**. **Kedia Agglomerated Marbles v. CCE 2003(SC)**. **CCE Vs Vicco Laboratories (2005) 179 ELT 17 (SC)**

Tea is not 'foodstuff'. It neither nourishes body nor sustains or promotes growth. It is not understood as food/foodstuff in common parlance or in dictionaries - **S Samuel v. UOI 2003 = 134 STC 610 (SC)**.

It was held that 'lip save' (a cream used to protect lips in high altitude areas by military personnel) will be classifiable as 'skin care cream' as per commercial parlance, and not as

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medicament, even if it has subsidiary curative value. **Alpine Industries v. CCE AIR 2003 SC 152 ELT 16 (SC),**

Trade meaning would be applicable (only) of a particular product description occurs by itself in the tariff entry and there is no conflict between tariff entry and any other entry. - **CCE v. ITC Ltd. 2003 AIR SCW 831 = 152 ELT 241 (SC)**

It was held that even when bulky goods are cleared in stages, the clearance is still of whole article and not its parts. In this case, bulky crane was cleared in disassembled condition in two consignments. It was held that assessee cleared 'crane in parts' and not 'parts of crane'. **Shirke Construction Equipments P Ltd. v. CCE 1997(CEGAT),**

Cycle removed in CKD condition is a 'cycle'. – **T I Cycles v. UOI 1983 (Mad HC).**

'Essential character' -The, factors governing 'essential character' will vary as between different kinds of goods and may be determined by the nature of material or component, its bulk, quantity, weight or value or by the role of a constituent material in relation to use of the goods. - **Bharat Heavy Electricals v. CC 1987 (CEGAT),**

A part' is a component whose absence will disable a machine or appliance. It must be regarded as an essential ingredient or part of that machine. **Electrosteel Castings v. CCE 1989(43) ELT 305 (CEGAT),**

Part of part is part of whole- A part of part is part of whole e.g. tyre is a part of cycle. 'Valve' is a part of the tyre. Hence, 'valve' will be treated as part of 'cycle'.

Exemption Notification/ Valuation principles cannot determine classification The Classification of a product is to be decided on basis of relevant heading and section and chapter notes. Classification cannot be decided on basis of exemption notification - **CCE v. Roha Dyechem (P.) Ltd. & CCE v. Gujarat State Fertilisers Co. Ltd. - (1996) (CEGAT).**

Rejected Final Product should be classified as scrap and waste and not as part -**Durgapur Steel Plant Vs CCE**

Some Parts are manufactured and some part are bought out at site, the rule of ckd and skd is not applicable. It cannot be said machinery cleared in unassembled condition. **Ganapathy Rope way Ltd Vs CCE 1999112ELT395(CEGAT)**

Customs Tariff and Central Excise Tariff - Though both Central Excise Tariff and Customs Tariff are based on HSN, it was held that classification under Customs Tariff couldn't be applied under Central Excise Tariff Act. - **Tata Liebert Ltd. v. CCE 2000 (CEGAT)**

Kitchen sink is classifiable as sanitary ware, which is a specific description and not as 'household articles of iron and steel' which is a general description. –

If a set consists of drawing instruments (90.17), pencil (96.09) and pencil sharpener (82.14), put up in a leather case (4201.90); the set will be classifiable under 90.17 i.e. drawing instrument.

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Carbon paper cannot be classified as a paper. In popular sense, the word paper is understood which is used for writing, printing, drawing, decorating, and for packing.- **Kores India Ltd (SC)**

Lal Dhant Manjan (Red Tooth Powder) cannot be classified as a Medicine. A medicine is prescribed by doctor and can be used for limited period. Common man using it for cleaning teeth, i.e., in popular sense and as per trade parlance theory, it should understand as tooth powder.

Baidvanath Ayurved Vs CCE

Mineral Water cannot classified as a beverages -Casino Hotel Vs state of kerala

Classification in case of exemption notification

In *Mangalore Chemicals & Fertilisers Ltd. Vs. DC* 1991 (51) ELT 437, the Supreme Court held that the Rules for interpretation of the statute are the same for the purpose of classification and exemption.

In *Eskayef Ltd. Vs. CCE 1990 (49) ELT- 649*, the Supreme Court held that the exemption from payment of a excise duty which has been granted under a Notification is confined to goods falling under a particular Tariff Heading. Merely because a product can be used for the purposes as specified in the exemption notification does not qualify it for exemption, unless it also falls under the Tariff Heading specified in the Notification because the exemption cannot transfer product from one Tariff entry to another.

In *Maestro Motors Ltd.* 2004 (174) E.L.T. 289, the Supreme Court has held that if a tariff heading is specifically mentioned in exemption notification, the Rules for Interpretation will apply to such exemption notification. However, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for purpose of classification, it may be something else.

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