

BASIC CONCEPTS

Question 1

PQR & Co. is engaged in the business of fabrication and erection of structures of various types on contract basis. They entered into a contract with M/s. XYZ Co. for fabrication, assembly and erection on turnkey basis of a waste water treatment plant. This activity involved procurement, supply, fabrication, transportation of various duty paid components and finally putting up a civil construction and erection of the waste water treatment plant and commissioning the same. The entire fabrication is done at site. The pressure testing was then carried out. The plant cannot function as such until it was wholly built. The excise department has issued a show cause notice that the fabrication at site amounted to manufacture of excisable goods since the plant came into existence in an unassembled form as per drawings and designs approved by the client, M/s. XYZ Co., before the same was installed and assembled to the ground with civil work. Therefore, according to the department, excise duty was payable on the value of the plant excluding the value of the civil work. Briefly discuss with reference to case law whether the show cause notice is sustainable in law.

(5 Marks) (May 2011)

Answer

No, the show cause notice is not sustainable in law. The facts of the case are similar to the case of *Larsen & Toubro Ltd. v. UOI 2009 (243) E.L.T. 662 (Bom.)*. 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 of a plant. Simply collecting together at site the various parts would not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts.

In the present case, as 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. Accordingly, since waste water treatment plant was not a separate movable marketable good and came into existence only on assembly of parts in the civil work, there was no question of levying excise duty on it.

Question 2

Differentiate between "non-excisable goods" and "non-dutiable goods". (3 Marks) (May 2010),

Answer

Section 2(d) of the Central Excise Act, 1944 defines "**excisable goods**" as goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. An explanation to Section 2(d) of the Central Excise Act, 1944 states that the expression "goods", for purpose of the said clause, includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

Goods which are not listed in Tariff or goods which are mentioned in Tariff, but the column of rate of duty is blank are **non-excisable** goods, **e.g. water (there is no entry in Tariff)**. Excise law is not applicable on non excisable goods.

"Non-dutiable goods" are excisable goods listed in Excise Tariff. Excise law is applicable to them, but they are not liable to excise duty. Non dutiable goods may be of two types-

- (i) Nil duty goods-Tariff rate for such goods is nil, and
- (ii) Exempted goods-100% exemption is available under section 5A. for such goods.

Question 3

Explain briefly the concept of "excisable goods" (2 Marks) (Nov 2009) (May 2011)

Answer

As per section 2(d) of the Central Excise Act, 1944, "excisable goods" means goods specified in the First Schedule and Second Schedule to the Central Excise Tariff Act, 1985 as being subject to the duty of excise and includes salt.

The explanation to section 2(d) clarifies that "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

Question 4

A Port Trust used cement concrete armour units in the harbour for keeping water calm. Each unit weighed about 50 tons and is like a tripod and keeps water calm and tranquil. These units are essentially in prismoid form and were made to order. They are harbour or location specific. The Central Excise Department contended that the armour units are excisable goods and chargeable to duty. Examine the validity of the Department's contention in the light of decided case law. (5 Marks) (June 2009)

Answer

The facts of the given case are similar to the case of **Board of Trustees v. CCE 2007 (216) ELT 513 (SC)**. The Supreme Court held that in order to constitute “goods”, twin tests have to be satisfied, namely, process constituting manufacture and secondly marketability. In the present case, the second test of marketability was in issue.

In this case, armour blocks, in prisomoid form, were made to order and were of certain specifications. **They were harbour or location specific.** It would depend on the water level required to be maintained in the harbour. **There was no evidence to show that these blocks could be used in any other harbour.** Moreover, the Department failed to prove marketability of the impugned goods. Therefore, assessee's contention, that goods were not capable for being bought and sold in the market was accepted. Therefore, in the given case, Department's stand is not correct and no duty is payable on the goods.

Question 5

Discuss briefly, whether excise duty is attracted on the excisable goods manufactured in the following cases:

- (i) *in the State of Jammu and Kashmir;*
- (ii) *by or on behalf of the Government.* (2 Marks) (Nov 2008)

Answer

- (i) Yes, excise duty is attracted on the excisable goods manufactured in the State of Jammu and Kashmir. Though originally the Central Excise Act, 1944 did not apply to Jammu and Kashmir, its application was extended to the same with the enactment of Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.
- (ii) **Section 3(1A)** of the Central Excise Act, 1944 provides that the excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government. Thus, **excise duty is payable** on goods manufactured by, or on behalf of, the Government (both Central & State) also.