

CLASSIFICATION OF EXCISABLE GOODS

Question 1

Explain briefly the significance of "trade parlance test" with respect to classification of excisable goods under the Central Excise Act, 1944. (3 Marks) (May 2011)

Answer

According to the trade parlance test, if a product is not defined in the Schedule and Section Notes and Chapter Notes of the Central Excise Tariff Act, 1985, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it, i.e., in commercial sense. However, where the tariff heading itself uses highly scientific or technical terms, goods should be classified in scientific or technical sense.

Question 2

"Pure & Lovely" are manufacturers of 'hair oil' (coconut oil) falling under Chapter 33 of the Central Excise Tariff (CET). Disputes arose in respect of two other categories of coconut oil viz., 'edible oil' or 'coconut oil'. The Department contends that the coconut oil falling under these two categories are meant for sale as hair oil and should be classified under Chapter 33 of the CET. The manufacturers contend that they are not printing the specific use of such oil as 'hair oil' and this should be classified as vegetable oil under Chapter 15 of the CET irrespective of its use by the consumer. Chapter Note 2 of Chapter 33 prescribes a condition that Heading No. 3305 (which covers hair oil) applies to products put up in packing of a kind sold by retail for such use. Section Note 2 to Section VI provides that goods falling in Heading 3305 by reason of being put up for retail sales are to be classified in the said Heading. Briefly discuss whether coconut oil packed in larger packs generally used by consumers for edible purposes would merit classification under Chapter 15. (4 Marks) (Nov 2010)

Answer

Yes, the coconut oil packed in larger packs generally used by consumers for edible purposes would merit classification under Chapter 15. The dispute in this case with the Department is restricted to 'edible oil' or 'coconut oil'. The assessee 'Pure & Lovely' pays excise duty under Chapter 33 in respect of all packages that are marked for use as 'hair oil'.

The Section Note 2 to Section VI supports the interpretation that although a product is capable of being classified under more than one heading, owing to the nature of its retail packing which is indicative of its use as hair oil, the classification under heading 3305 would get priority.

What follows is that if the same coconut oil is packed in larger packs of say 1 litre or 2 litre generally used by consumers for edible purposes (even though some customers may use it as hair oil), it would be classified under Chapter 15. Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the product. Equally, if the oil is put in packages generally meant for sale as 'hair oil', then it would be classified under Chapter 3305 even though some consumers may use it as edible oil. Same view was followed in the Department Circular No. 890/10/2009 –CX., dated 3-6-2009.

Question 3

An assessee classified his product as per Central Excise Tariff subject to nil rate of duty. The Department classified it under another heading attracting 8% duty, relying upon the HSN for the purpose of classification of the impugned product. However entries in the HSN and Central Excise Tariff are not aligned. Do you think that Department's plea is valid in law? Discuss briefly, with reference to a decided case law, if any. (5 Marks) (May 2010)

Answer

No, the Department's plea is not valid in law. Central Excise Tariff is based upon HSN, but it is not a copy of HSN. In case of **Camlin Ltd. v. CCEx. Mumbai (2008) 230 ELT 193 (SC)**, the Supreme Court ruled that when the entries in HSN and the Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purposes of classification of goods. Central Excise Tariff of India should be followed in such cases. It should be appreciated that since the entries under the HSN and the entries under the said Tariff were completely different, the Department could not base its decision on the entries in the HSN.

Question 4

The assessee manufactured compressors and filters and removed them as "stand alone" items. He also manufactured and removed safety valves and filters on payment of duty. The assessee also supplied bought out items like V belts, motor, pulley etc. to their buyers. The Excise Department relying on rule 2(a) of the General Interpretative Rules for classification has decided to include the value of safety valves and filters together with value of bought out items in the value of compressors for purposes of duty under section 4 of the Central Excise Act, 1944. Write a brief note, with any decided case law, whether the stand taken by the Department is correct. (5 Marks) (Nov 2009)

Answer

A similar question had come up for consideration before the Supreme Court in the case of

CCEx., Delhi v. M/s Frick India Ltd. 2007 (216) ELT 497 (S.C). In the instant case, the Supreme Court observed that rule 2(a) of the General Interpretative Rules for classification could not be applied in this case as:

- (i) The compressors manufactured by assessee were removed as 'stand alone' item and not in an unassembled or disassembled condition; and
- (ii) Section and Chapter notes in Tariff and the Interpretative Rules do not provide guidelines for valuation of excisable goods because they decide the classification, and valuation is different from classification.

Thus, the Supreme Court held that the parts and accessories could not be classified as 'compressors' and therefore, were independently classifiable under respective headings applicable to them. The concept of 'classification' is different from that of 'valuation'. Therefore, the contention of the Department is not correct in law.