

Basic Concepts

Question 1

Explain briefly the following with reference to Central Excise Act 1944:-

- (a) Excisable goods
- (b) Assessee
- (c) Taxable Event

Answer

- (a) 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) states 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. Thus, the **concept of deemed marketability** is introduced by this explanation.

- (b) Rule 2(c) of Central Excise Rules, 2002, states that. '**assessee**' means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an **authorized agent** of such person.
- (c) 'Taxable Event' is that event which on its occurrence creates or attracts the liability to tax. In the context of Central Excise 'Taxable Event' is the "manufacture" of goods as per section 3 of Central Excise Act. However, the collection of duty is postponed to the stage of removal of goods as per Rule 4 of the Central Excise Rules, 2002. In **Wallace Flour Mills Vs C.C. EX. (1989) 44 ELT 598** the apex court held that the taxable event for the liability to duty was manufacture of goods but the duty could be levied and collected at any later stage for administrative convenience. Merely because the payment of duty under Rules is postponed to the stage of removal it could not be contended that the removal of goods has become the taxable event for the levy of duty. Besides, it is also worth mentioning that the excisable goods which were chargeable to duty under the Tariff at the time of manufacture but were exempted under an exemption notification will be liable to payment of duty if, post manufacture and prior to removal, such exemption is withdrawn. On **the other hand**, in cases where the goods were outside the purview of the Tariff at the time of manufacture **such goods would not be chargeable to duty** even though subsequent to manufacture but prior to removal, such goods were brought

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within the purview of the Tariff or were charged to a duty of excise by means of an amendment to the Tariff.

Question 2

Explain briefly with reference to the provisions of the Central Excise Act the term "Deemed Manufacture".

Answer

As per **section 2(f)** of the Central Excise Act, 1944 "manufacture" includes any process-

- (i) incidental or ancillary to the completion of a manufactured product;
- (ii) which is specified in relation to any goods in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, or
- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in production or manufacture on his own account.

The processes that qualify to be manufacture as per clause (ii) and (iii) of section 2(f) are termed as deemed manufacture.

Thus, if any process which is specified in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture is carried out, goods will be deemed as manufactured, even if as per Court decisions, the process may not amount to manufacture. For instance, if any of specified processes (like re-packing, re-labelling, alteration of retail sale price etc.) is being carried out on goods covered in Third Schedule to the Central Excise Act, 1944, the process will be deemed to be as that of manufacture.

Question 3

Briefly explain the following with reference to the provisions of Central Excise Act, 1944:

- (i) *Wholesale dealer*
- (ii) *Factory*
- (iii) *Dutiability of waste and scrap*

Answer

- (i) As per **section 2(k)** of the Central Excise Act, 1944, **wholesale dealer** means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture and **includes a broker or commission agent** who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

- (ii) As per **section 2(e)** of the Central Excise Act, 1944, **factory** means any premises, **including the precincts thereof**, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.
- (iii) The issue relating to dutiability of waste and scrap was settled by the Supreme Court by its decision in ***Khandelwal Metal & Engineering Works Vs Union of India 1985 20 ELT 222*** by holding that notwithstanding that process waste and scrap arose as intermediate products or by-products out of final products, such process waste and scrap, if marketable, would be chargeable to duty in view of the incorporation of the specific sub-headings in various chapters of the tariff. The Apex court has held that process waste and scrap is a commercially distinct and identifiable product and has commercial value. Hence, such waste and scrap is chargeable to duty if covered in the Tariff.

Therefore, the position as it currently stands is that all process waste and scrap if incorporated in the Tariff and if marketable would be chargeable to duty. It is important to note here that as the excise duty is on manufacture, **the waste and scrap actually generated** in the course of manufacture alone is chargeable to duty and the **waste and scrap generated without any process is not liable to excise duty**.

Question 4

WM Ltd. is manufacturing a product which is captively consumed to produce a final product, which is exempt from the payment of excise duty. The intermediary product is having a distinct market of its own. The company is of the view that since the final product is exempt; no duty liability arises on intermediary product also. The department objected the view of the assessee.

Discuss, with reference to a decided case law, if any, whether the view of company is justifiable?

Answer

The duty of excise is a duty on manufactured goods which are movable and marketable. If any manufactured goods satisfy the movability and marketability conditions, it would become dutiable even if it is an intermediate product and the final product is not dutiable. Therefore, in the given case the intermediate product would be dutiable even though it is captively consumed and the final product is not dutiable as it has a distinct market of its own and is marketable.

The Supreme Court's view in the case of ***White Machine Vs. CCEX Delhi 2008(224) ELT 347*** was also the same. In the above case, the assessee manufactured C.I. Castings which were captively consumed for production of C.I Chilled Rolls. These Chilled Rolls were exempt from duty. The Apex Court opined that since the final product was exempt, the C.I Castings would become dutiable if they satisfied the marketability condition.

Therefore, the company's view is not justifiable and the Department's view is acceptable.

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Question 5

Briefly explain the following with reference to the provisions of the Central Excise Act, 1944:

- (i) *Adjudicating authority*
- (ii) *“Assembly” would tantamount to “Manufacture”*
- (iii) *Processing and Manufacture*

Answer

- (i) **Adjudicating Authority:** Section 2(a) of the Central Excise Act, 1944 defines adjudicating authority to mean any authority competent to pass any order or decision under this Act. However, it **does not include** the following:
 - (a) CBEC constituted under the provisions of Central Board of Revenue Act, 1963;
 - (b) Commissioner of Central Excise (Appeals);
 - (c) Appellate Tribunal.
- (ii) **“Assembly” would tantamount to “Manufacture”:** Assembly is a process of putting together a number of items or parts of an item to make a product or item. Assembly of various parts and components may tantamount to manufacture if new product emerges, which is movable and marketable. In ***Narne Tulaman Manufacturers Pvt. Ltd. V CCE 1988 (38) E.L.T. 566 (S.C)*** it was inferred that if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture. Similarly, in ***BPL India Ltd. Vs CCE 2002 (143) ELT 3***, the Supreme Court held that assembly of imported kits of VTR with colour monitors imported in disassembled condition amounted to manufacture since the end product had a distinct character and use and the process of assembly was done by technical experts or skilled persons. On the other hand, assembly of plant at site will not be liable to duty, if “immovable property” emerges after such assembly because excise duty can be levied only on ‘goods’.
- (iii) **Processing and Manufacture:** A process is series of things which are carried out in order to achieve a particular result. ‘Processing’ is distinct from ‘manufacturing’ and mere processing does not mean ‘manufacture’. In ***Empire Industries V Union of India 1985 20 ELT 179 (SC)*** it was held that any process creating something else having distinctive name, character and use would be ‘manufacture’. Thus, processing gray fabrics by bleaching, dyeing, printing of fabric will amount to ‘manufacture’.

Question 6

Briefly describe whether a Raw Material Supplier can be treated as manufacturer? Are there any exceptions to aforesaid proposition?

Answer

A Raw Material Supplier can not be treated as manufacturer even if he possesses the right of rejection of goods manufactured by the concerned job worker or processor. It has been held in

Multi Trade Overseas Corporation V CCE 1987 (30) ELT 980 (CEGAT)* that raw material supplier can not be held as manufacturer unless the processor was a mere dummy for the raw material supplier. Likewise in *Mayo India Ltd. V CCE 1999(113) ELT 1036 (CEGAT)* it has been held that job worker is the manufacturer and raw material supplier is not manufacturer if relationship is principal to principal basis. Thus, it can be safely inferred that generally a Raw Material Supplier is not treated as manufacturer. However, in the following exceptional situations a Raw Material Supplier can be treated as manufacturer:

- (i) There is no principal to principal relationship and job worker functions like a hired labour.
- (ii) Job Worker functions as an agent of raw material supplier.
- (iii) Job worker functions as labourer under the supervision and control of raw material supplier.
- (iv) Job workers are not manufacturing on their own account and they are dummy or bogus concerns and the arrangement is made to evade duty.

*Note-This case was maintained in **Collector vs. Multi Trade Overseas Corporation 1997(96)ELT A233(SC)**.

Question 7

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.

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.

Question 8

Differentiate between "non-excisable goods" and "non-dutiable goods".

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

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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 9

State briefly whether the following circumstances would constitute “manufacture” for purposes of section 2(f) of the Central Excise Act, 1944:

- (i) *Both inputs and the final product fall under the same tariff heading under the first schedule to the Central Excise Tariff Act, 1985 (Tariff Act.)*
- (ii) *Inputs and final product fall under different tariff headings of the Tariff Act.*

Answer

- (i) ‘Manufacture’ is bringing into goods known in the market having distinctive name, character or use and separate and identifiable function. Once a new commodity having a definite and distinct commercial identity in market is produced and the same has been specified in the tariff, it is exigible to duty. It is irrelevant whether the new article falls into the same tariff heading as the duty paid raw material from which it is manufactured or belongs to a separate tariff heading.

It was held in **CCEx. v. Kapri International (P) Ltd. (2002) 142 ELT 10 (SC)** that if manufacture takes place, the commodity is dutiable even if the raw material and the resultant product fall under the same tariff heading. It was subsequently followed in **CCEx., Jaipur v. Mahavir Aluminium Ltd. (2007) 212 ELT 3 (SC)**, wherein it was held that converting aluminium ingots (7601.10 – old entry) into aluminium billets (7601.10 – old entry) is ‘manufacture’, because they have separate, distinct and identifiable marketability and saleability.

- (ii) As held in **CCEx. v. Markfed Vanaspati (2003) 153 ELT 491 (SC)**, mere change in tariff does not mean that there is ‘manufacture’ It was confirmed in **CCEx. v. S R Tissues (2005) 186 ELT 385 (SC)** that just because raw material and finished product fall in different tariff headings it cannot be presumed that process of obtaining finished product from such raw material automatically constitutes ‘manufacture’

Therefore, manufacturing is not only about a process and a product but it is about a new identity that must emerge out of the given process. Mere mention of process in tariff

entry is not sufficient, it must be specifically stated that a particular process amounts to 'manufacture'. – **Shyam Oil Cake Ltd. v. CCEx. (2005) 174 ELT 145 (SC – 3 members bench).**

Question 10

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.

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 prismoid 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 11

M/s. SYL purchases film from the manufacturer thereof on payment of appropriate central excise duty. They undertake the processes of lamination/ metallisation of the said film. The department directs them to pay central excise duty as the processes undertaken by them amount to manufacture. Please offer your comments with the help of decided case law.

Answer

As per section 3 of the Central Excise Act, 1944 a duty of excise is levied on goods produced or manufactured in India. The paragraph *inter alia* provides that as a result of manufacture, a new and different article must emerge having a distinctive name and character or use.

The issue in the problem has been considered by the Supreme Court in the case of **Meltex (I) Pvt. Ltd. v. C.C.E. 2004 (165) E.L.T. 129 (S.C)** wherein it has held that **laminating/ metallising of duty paid films does not amount to manufacture** as:

- (i) no new and distinct product comes into existence, and
- (ii) the product which is a film at the onset remains a film, even after lamination or metallisation.

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Therefore, applying the ratio of the abovementioned decision to the present problem, it can be inferred that the stand taken by the department is not tenable in law.

Question 12

ABC Company imported medicines in pallets with one big box containing assorted medicines in smaller units which were, then, repacked in thermocole boxes of different sizes which again were put into cardboard boxes. The cardboard boxes were in turn labelled containing, inter alia, the name of the medicine, the name of the manufacturer, the quantity, batch no., manufacturing date, expiry date and name of the marketing agency. The department relying upon note 5 to chapter 30, claimed that the activities as aforesaid amount to manufacture i.e., bulk pack to retail pack. Decide whether the above activities tantamount to manufacture.

Answer

The facts of the case are similar to the case of **CCEx., Mumbai v. Johnson & Johnson Ltd., 2005 (188) ELT 467 (SC)**. While dismissing the case, the Supreme Court observed that merely packing for being marketed does not amount to manufacture for the purpose of Note 5 to Chapter 30 of Central Excise Tariff. The products 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'. In this case there was no evidence relied upon by the department to the effect that the cardboard boxes or the thermocole containers in which the units were placed were 'retail packs'.

In view of the abovementioned decision, the **activity of repacking described in the question would not amount to manufacture.**

Question 13

"Mere selling of a commodity does not mean it is marketable". Elucidate.

Answer

Unless the goods are capable of being marketed, they cannot be charged to duty. Marketability is the capability of a product of being put into the market for sale. Supreme Court in **Union of India v. Delhi Cloth and General Mills Case – 1977 (1) ELT (J199)** has held that in order to become goods, it is necessary that an article must be something which can ordinarily come to the market to be bought and sold.

However, the Apex Court in **UOI v Indian Aluminium Co. Ltd. 1995 (77) ELT 268** has held that dross and skimmings are not marketable commodity even if they can be sold to recover some metal as everything which is sold is not necessarily a marketable commodity as known to the commerce and which, it may be worthwhile to trade in. The dross and skimmings arising during the manufacture of aluminium are nothing but waste or rubbish which is thrown up in the course of manufacture. They are not metal in the same class as waste or scrap. It may be possible to recover some metal from them and therefore they can be sold.

This view has been reiterated by the Supreme Court in **CCEx v. Tata Iron and Steel Co. Ltd. 2004 (165) E.L.T. 386 (S.C.)** wherein the Apex Court has held that the dross and skimming are merely the refuse, scum or rubbish produced during the process of manufacture. The

Supreme Court has held that merely because the dross and skimming are sold to customers, it cannot be inferred that they are marketable commodity as even rubbish can be sold. However, that does not make rubbish a marketable commodity. Mere selling of a commodity does not mean that it is marketable since a commodity can also be sold as rubbish. Marketability means selling of a commodity which is known to the commerce and which may be worthwhile to trade in.

In view of these decisions it can be **inferred that in order to be marketable an item should be capable of being bought and sold. However, the item should be something which is worthwhile to trade in and not just refuse, scum or rubbish.**

Question 14

TCL purchases duty paid metal rods and draws them into wire of a thinner gauge. Both the items fall under different tariff headings. The assessee claims that the process undertaken by it does not amount to manufacture. You are required to advise with reference to the present position of law in this regard.

Answer

The taxable event for levying excise duty is production or manufacture of the excisable goods. Section 2(f) of the Central Excise Act, 1944 *inter alia* provides that manufacture includes any process, incidental and ancillary to the completion of a manufactured product, and which is specified in relation to any goods in the Section or Chapter Notes of the Schedules of the Central Excise Tariff Act, 1985 as amounting to manufacture.

The definition stipulates that manufacture will include any process which is specified in the Section or Chapter Notes of the Central Excise Tariff as amounting to manufacture.

However, **Note No. 10 in Section XV of the First Schedule** to the Central Excise Tariff Act provides that the process of drawing or redrawing a rod, wire or any other similar article, into wire shall amount to manufacture.

Therefore, **in view of the above Section Note, the claim of TCL is not correct in law.**

Note: *This issue had come up before the Supreme Court in the case of CCE v. Technowled Industries (2003). The Apex Court held that there was no manufacture of a new product when the gauge of the rod was made thinner and the product was finished a little better. Merely because there were two separate entries, it did not mean that the product became excisable.*

However, in view of the above-mentioned Section Note this judgment does not hold good anymore.

Question 15

Gaseous Ltd., purchased helium gas in bulk from the open market and its quality control officer had conducted various tests and issued test reports stating the results of the tests. The bulk purchase was packed and filled in cylinders of various sizes and certificates were issued along with quantities. The purchases from the open market were of generic description and

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after test and analysis were sold to different customers based on their specific requirements with a profit margin of 40 to 60%. The Central Excise Department claimed that duty had to be paid on the sale price as there was "deemed manufacture" in terms of Note 9 to Chapter 28 of the Central Excise Tariff, 1985 which reads as follows:

"In relation to products of this Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture." Briefly explain with a note based on case law, if any, whether:

- (i) *the process of filling the bulk gas into cylinders of smaller quantities after tests and quality processes with distinct grades would amount to 'treatment' as per the said chapter note.*
- (ii) *Whether it could be said that the helium gas purchased in bulk is already marketable and hence the chapter note will not be attracted in this case.*

Answer

The facts of the given case are similar to the case of *Air Liquide North India Pvt. Ltd. v. CCE 2011 (271) E.L.T. 321 (S.C.)*. Hence, answers to part (i) and (ii) are based on the observations and the decision in the said case.

- (i) Yes, the process of filling the bulk gas into cylinders of smaller quantities after the tests and quality processes with distinct grades would amount to 'treatment' as per the said chapter note.

In the aforesaid judgment, the Apex Court observed that if the gas purchased by the assessee had not undergone any treatment and was being sold as such, customers of the assessee could have purchased the same from the assessee's suppliers. Further, the customers would not have paid a price 40% to 60% higher than the purchase price of assessee.

- (ii) No, the helium gas purchased in bulk was not already marketable and hence, chapter note will be attracted in this case.

The Supreme Court observed that the marketability of the product to "the purchaser trading in it" is distinguishable from the marketability of the product to "the purchaser purchasing the same for final consumption". The phrase "marketable to the consumer" in the Chapter note refers to the latter case.

The helium gas purchased in bulk by the assessee was marketable to the "purchaser trading in it" and the helium sold by the assessee is marketable to "the person who purchases the product for his own consumption". Hence, the product became marketable only after undergoing the said treatment. Thus, the chapter note is attracted thereby making the assessee liable to pay excise duty.

Question 16

Explain briefly whether “assembly” would tantamount to ‘manufacture’ under the Central Excise Act, 1944.

Answer

Assembly is a process of putting together a number of items or their parts to make a product. All cases of assembly may not amount to manufacture as an already manufactured item may also be assembled to put it in a readily usable form.

However, assembly of various parts and components may tantamount to manufacture if a new product which is movable and marketable emerges out of such assembly. Therefore, if an “immovable property” emerges after such assembly, it will not be considered as manufacture.

The Apex Court in the case of *Narne Tulaman Manufacturers Pvt. Ltd. V CCE 1988 (38) E.L.T. 566 (S.C)* held that if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture.

Question 17

The assessee M/s T & Co. Ltd. were engaged in the manufacture of ‘tarpaulin made ups’. This was nothing but tarpaulin cloth prepared by making a solution of wax, aluminum stearate and pigments that were mixed. The solution was heated in a vessel and was transferred to a tank. Grey cotton canvas fabric was then dipped into the solution and passed through two rollers, whereafter the canvas was dried by exposure to sun. The tarpaulin made ups were prepared by cutting the cloth into various sizes and stitched and eyelets were fitted. The central excise department has issued a show cause notice to M/s T & Co. Ltd. that the tarpaulin made ups prepared by means of cutting, stitching and fixing eyelets amounts to manufacture under the Central Excise Act, 1944. Write a brief note with reference to decided case law if any whether the department’s view in the matter is legally sustainable.

Answer

The facts of the given case are similar to the one decided by the Apex Court in the case of *CCE v. Tarpaulin International. 2010 (256) E.L.T. 481 (S.C.)* In this case, the Apex Court has observed that stitching of tarpaulin sheets and making eyelets does not change the basic characteristic of the raw material as the process does not bring into existence a new and distinct product different from the original commodity. The original material used i.e., the tarpaulin, is still called tarpaulin made-ups even after undergoing the said process. Hence, the Supreme Court has held that process of making tarpaulin made ups by cutting, stitching the tarpaulin fabric and fixing eyelets therein cannot be said to be a manufacturing process liable to excise duty.

Therefore, in view of the above-mentioned judgement, the Department’s view in the matter is not legally sustainable.

Question 18

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 turn key 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 carried out 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 fabrication activity was undertaken. 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.

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 19

Write a short note with reference to the Central Excise Act, 1944 on "goods".

Answer

Section 2(d) of the Central Excise Act, 1944 carries an explanation which 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.

Question 20

Write a brief note on taxable event for levy of excise duty. Quote the relevant Supreme Court decision.

Answer

As per section 3 of the Central Excise Act, 1944, the taxable event for charge of central excise duty is manufacture of the goods. However, collection of duty is postponed to the stage of removal of goods as per rule 4 of the Central Excise Rules, 2002.

According to the decision of the Apex Court in the case of *Vazir Sultan Tobacco Co. Ltd. v. CCE (1996) 83 ELT 3*, exempted goods will be chargeable to duty if, subsequent to manufacture but before removal exemption is withdrawn. However, goods which are not listed in the Schedules to Central Excise Tariff Act, 1985 will not be liable to excise duty if they are subjected to levy after they are manufactured. The test for determining the liability is whether goods were covered in the tariff when they were manufactured. Therefore, date of removal is relevant only if levy was there at the time of manufacture.

Question 21

M/s. Cool and Kool Ltd. has two units, one in Jaipur and another in Delhi. Jaipur unit manufactures condensing units which are cleared to Delhi unit on payment of appropriate excise duty. Delhi unit procures cooling units manufactured locally and combines the same with such condensing units. After conducting quality control test and affixing the brand name, the Delhi unit clears the complete units along with pipe kits, electrical cord, remote control, etc. The Department contends that the process being carried out by Delhi unit amounts to manufacture as it is not a mere process of assembly whereas, the assessee argues that putting together various duty paid articles in a carton with a brand name to be marketed as 'air conditioner' is not manufacture. No process is involved except that all the items are put together in one box.

Explain, with the help of decided case law, whether the contention of the Department is correct in law?

Answer

Yes, the contention of the Department is correct in law. The facts of the given case are similar to the case of *Fedders Lloyd Corporation Ltd. v. CCEx. (2008) 221 ELT 3 (SC)* wherein it was held that neither the condensing unit nor the cooling unit by itself, was a complete air conditioner. It was only when these two were put together that the complete unit of air conditioner fit for use came into existence. The air conditioner, so cleared by Delhi branch was a commercially new article. Hence, the process amounted to manufacture.

Processing and assembly of various parts and components may amount to manufacture if a new and identifiable product known in the market emerges, which is movable and marketable.

Question 22

Kaavya was the manufacturer of the white cement. He repaired his worn out machineries/parts of the cement manufacturing plant at its workshop such as damaged roller, shafts and coupling with the help of welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams, etc. In this process of repair, M.S. scrap and Iron scrap were generated. Kaavya cleared this metal scrap and waste without paying any excise duty. The Department issued a show cause notice demanding duty on the said waste contending that the process of generation of scrap and waste amounted to the manufacture in terms of section 2(f) of the Central Excise Act.

Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.

Answer

No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of **Grasim Industries Ltd. v. UOI 2011 (273) E.L.T. 10 (S.C.)**. The Apex Court observed that 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. 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 of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, (the end product). The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process.

Hence, it held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant does not amount to manufacture.

Question 23

Prakhat Manufacturers was a manufacturer of cigarettes. It used duty paid paperback aluminum foil in the roll form for the purpose of packing cigarettes. In the process, the roll of aluminum foil was cut horizontally to make separate pieces of the foil and word 'PULL' was embossed on it. Thereafter, fixed number cigarettes were wrapped in it. An aluminium foil being resistant to moisture was used as a protector for the cigarettes and to keep them dry.

Revenue issued a show cause notice to Prakhat Manufacturers alleging that the process of cutting and embossing aluminum foil amounted to manufacture. Since the aluminum foil was

used as a shell for cigarettes to protect from them moisture; the nature, form and purpose of foil were changed.

Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.

Answer

No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of *CCE v. GTC Industries Ltd.* 2011 (266) E.L.T. 160 (Bom.). The High Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value, only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Hence, process did not amount to manufacture as per section 2(f) of the Central Excise Act, 1944. Only the process which produces distinct and identifiable commodity and renders marketable value can be called manufacture.

Exercise

1. *What are the basic conditions for levy of duty under section 3 of the Central Excise Act, 1944?*
2. *Describe the constitutional provisions under which Central Excise Duty is imposed.*
3. *Explain whether a person who is neither a producer nor a curer nor a manufacturer of excisable goods but only stores such goods in a warehouse, can be called upon to pay the duties of excise on such goods?*

Answer/Hint : Yes, if stores in warehouse under Rule 20.

4. *Outline any six processes which have been deemed to be a process of "manufacture" under the Central Excise Tariff Act, 1985, by way of Section Notes/Chapter Notes. Also examine the relevance thereof to the provisions of Section 2(f) of the Central Excise Act, 1944.*

Answer/Hint: (i) In case of dairy products like milk, cream, butter etc., the labelling or re-labelling of containers or re-packing from bulk packs to retail packs

(ii) In relation to product of tariff item 2106 90 30, adding or mixing cardamom, copra, menthol, spices, sweetening agents or such ingredients, other than lime, katha (catechu) or tobacco to betel nut in any form

(iii) In case of preparations of meat, fish etc. labelling or re-labelling of containers or re-packing from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer

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- (iv) Labelling or re-labelling of containers or re-packing from baulk packs to retail packs of organic chemicals.
 - (v) Recording of sound or other phenomena on audio or video tapes.
 - (vi) Building a body or fabrication of structure on chassis shall amount to manufacture of a motor vehicle.
5. *Define the nature of excise duty and enumerate the duties leviable under the various excise laws and rules made thereunder.*
 6. *Discuss briefly whether excise duty is attracted on the excisable goods manufactured in:*
 - (a) *Jammu & Kashmir;*
 - (b) *Special Economic Zone;*
 - (c) *100% EOU;*
 - (d) *Indian Territorial Waters;*
 - (e) *Beyond Indian Territorial Waters.*
 7. *Examine whether the following amount to 'manufacture':*
 - (i) *Labeling or re-labeling of unit containers of chocolate*
 - (ii) *Dyeing and colouring of yarn*
 - (iii) *Pulverising of chilly*
 8. *With reference to the Central Excise Act, 1944, define the following:*
 - (i) *Factory*
 - (ii) *Appellate Tribunal*
 - (iii) *Excisable Goods*
 - (iv) *Wholesale Dealer*
 - (v) *Sale and purchase*
 - (vi) *Broker or commission agent*
 9. *Discuss whether the following can be considered as excisable goods for the purpose of levying excise duty:*
 - (a) *Turn key projects*
 - (b) *Lifts and escalators*
 - (c) *Refrigeration or Air conditioning plants*
 10. *Explain briefly whether "assembly" would tantamount to "manufacture" under the Central Excise Act, 1944.*

11. *M/s. Onkar Steel Works processes cold rolled strips from duty paid hot rolled strips. Duty is being paid by M/s. Onkar Steel Works on removing cold rolled strips. M/s. Onkar Steel Works contends that cold rolled strips are only those strips, which emerge after the hot rolled strips have been processed and the edges sheared and slit according to the specification of the customer. However, Department has claimed that cold rolled strips meant and included unsheared and unslit strips also. The basis of the Department's claim is Indian Standard Specification Nos. 1956 to 1962, which specify that a strip "is supplied in straight length or in coil with mill, trimmed or sheared edges." On this basis duty is demanded on the unsheared and unslit strips also. Discuss whether the demand put forth by the Department is tenable in law. You may refer to any decided case laws on this issue.*

Answer/Hint: Similar issue came up for consideration before Supreme Court in the case of **Tata Iron & Steel Co. Ltd. v. Union of India 2004 (164) E.L.T. 372 (S.C.)**. Here, the Apex Court pointed out that there was no separate heading in respect of cold rolled strips and hot rolled strips.

Another reasoning put forward by the Supreme Court was that there was no proof of the marketability of the cold rolled strips, which is an essential item of manufacture. The Court held that Marketability is a question of fact and does not follow from the mere mention of item in the ISI. Therefore, it was held by the Court that the processing of cold rolled strips from duty paid hot rolled strips does not amount to manufacture.

Therefore, the Department's claim in the instant case is not tenable as the very process of manufacturing cold rolled strips from hot rolled strips does not amount to manufacture, thereby, making the demand on unsheared and unslit strips void.

12. *Pravaal purchases duty paid wire rods and draws them into a thinner gauge. The two items fall under different tariff headings. Pravaal claims that the process undertaken by him does not amount to manufacture. His claim is based on a decision given by the Apex Court in the case of Collector of Central Excise v Technowled Industries 2003 (155) E.L.T. 209 (S.C.). Is the claim of the assessee correct in the present position of law?*

Answer/Hint: The Apex Court had held in the case of **Collector of Central Excise v Technowled Industries 2003 (155) E.L.T. 209 (S.C.)** that there is no manufacture of a new product when the gauge of the rod is made thinner and the product is finished a little better.

However, Finance (No. 2) Act, 2004 has inserted a section note in section XV of the First Schedule to the Central Excise Tariff Act so as to provide that 'the process of drawing or redrawing a rod, wire or any other similar article, into wire' shall amount to 'manufacture'. Therefore, this chapter note overrules the judgment of the Supreme Court.

Hence, the contention of the assessee is not correct in law.

13. *MTZ Ltd. purchases edible vegetable oil from the open market and refines it. Refined edible vegetable oil falls in Chapter 15 of the First Schedule to the Central Excise Tariff. MTZ Ltd. claims that the process undertaken by it does not amount to manufacture as there is no Chapter Note or Section Note which specifies that refining of edible vegetable oil amounts to manufacture.*

You are required to advise with reference to the present position of law in this regard.

Answer/Hint: The definition of manufacture inter alia provides that “manufacture includes any process, which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture.”

Finance Act, 2005 has inserted a Note in Chapter 15 of Central Excise Tariff to provide that in relation to refined edible vegetable oils falling under Headings 1507 to 1515, the process of refining shall amount to manufacture. In this context, the process of refining shall include treatment of crude oil with alkali, bleaching and deodorisation. This Chapter note has been given retrospective effect from 1.03.1986.

Therefore, in the current position of law the process of refining of edible vegetable oil undertaken by MTZ Ltd. shall amount to manufacture.

Note: This matter had come up before the Supreme Court in the case of **Shyam Oil Cake Ltd. v. CCEx., Jaipur, 2004 (174) E.L.T. 145 (SC)**. The Apex Court stated that merely setting out a process in tariff entry would not be sufficient to hold that the particular process resulted in manufacture. If the process was indicated in the Tariff Entry, without specifying that the same would amount to manufacture, then the indication of the process was merely for the purpose of identifying the product and the rate which was applicable to that product. The Apex Court emphasised that for a deeming provision to come in to play it must be specifically stated that a particular process would amount to manufacture. In the absence of it being so specified, the commodity would not become excisable merely because a separate Tariff Item existed in respect of that commodity.

It was observed by the Supreme Court that neither the Section Note nor the Chapter Note nor the Tariff Item gave any indication that the process indicated would amount to manufacture. The product remained edible vegetable oil even after the processing/refining. It was held by the Apex Court that as actual manufacture had not taken place, deeming provision could not be invoked in the absence of a specific statement that the process would amount to manufacture.

However, in view of the above-mentioned amendment made by Finance Act, 2005 this judgment does not hold good anymore.

14. *Alpha Ltd. is engaged in the activity of cutting/slitting of jumbo rolls of toilet paper of a width exceeding 36 cms. The jumbo rolls are purchased on payment of excise duty from various suppliers. The process undertaken by Alpha Ltd. reduces the width of the jumbo rolls to less than 36 cms. The rolls with width exceeding 36 cms and with width less than*

36 cms fall under different tariff headings. The excise department contends that such reduction of width amounts to manufacture. The excise department has assessed and demanded duty from Alpha Ltd. on the basis of the heading covering jumbo rolls of width less than 36 cms.

Answer/Hint: The facts of the problem are similar to that of the case of **CCEx. New Delhi – I v. S.R. Tissues Pvt. Ltd. 2005 (186) ELT 385 (SC)**. In this case, the Supreme Court has held that slitting/cutting of jumbo rolls of plain tissue paper into smaller size does not amount to manufacture as its character and end-use viz., household purposes, do not undergo any change on account of winding, cutting/slitting and packing. Further, slitting and cutting of toilet paper cannot be termed as deemed manufacture as the said process is not treated as manufacture by legislature under any of the Section/Chapter Notes of the Central Excise Tariff.

The Apex Court has elaborated that mere mention of a product in a tariff heading does not necessarily imply that said product is obtained by process of manufacture. Just because raw material and finished product come under two different headings, it cannot be presumed that process of obtaining finished product from such raw material automatically constitute manufacture. Therefore, slitting/cutting of jumbo rolls of toilet tissue paper into various shapes and sizes shall not amount to manufacture merely because tissue paper in jumbo roll of size exceeding 36 cms. fall in one entry and toilet roll of a width not exceeding 36 cms. fall in a different entry. The Supreme Court further explained that value addition on account of transport charges, sales tax, distribution and selling expenses and trading margin without any change in name, character or end-use by mere cutting/slitting of jumbo rolls cannot constitute the criteria to decide what is “manufacture”.

In view of the abovementioned decision, the contention of the excise department does not hold good.

15. *Whether production of mustard oil and oil cake from mustard seeds amounts to manufacture?*

You are required to examine the situation with the help of a decided case law.

Answer/Hint: The activity of producing mustard oil and oil cake from mustard seeds amounts to manufacture. This particular issue has been decided by the Supreme Court in the case of **Jai Bhagwan Oil and Floor Mills v. UOI 2009 (239) E.L.T. 401 (SC)**. In the instant case, the Apex Court held that the true test to ascertain whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity/raw material involved in the manufacture.

When mustard seeds were subjected to the process of extraction whereby mustard oil and oil cake were produced, the process involved manufacture of mustard oil as also the manufacture of oil cake. It was certainly not a mere process of cleaning, repairing,

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reconditioning, recycling or assembling. Oil cake had a distinct and different identity from mustard seeds and it had a separate name, character and use different from mustard seed. Oil cake was not a waste to be thrown away, but was a valuable product with a distinct name, character, use and marketability. Resultantly, it can be concluded that the said process amounts to manufacture.