

Basic Concepts

Question 1

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

- (a) *Excisable goods*
- (b) *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) '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exemption notification will be liable to payment of duty if, post manufacture and prior to removal, such exemption is withdrawn.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 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".

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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 as 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.

Question 4

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

- (i) *Adjudicating authority*
- (ii) *Assembly tantamounts to manufacture*
- (iii) *Processing and Manufacture*

Answer

- (i) 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) Central Board of Excise and Customs constituted under the provisions of Central Board of Revenue Act, 1963;
 - (b) Commissioner of Central Excise (Appeals);
 - (c) Appellate Tribunal.
- (ii) 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.

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- (iii) It is necessary to differentiate between manufacture and processing. Manufacture involves a series of processes, whereas a process is one of the activities undertaken for manufacture of a product from input materials. Manufacture is the cumulative effect of various processes to which raw materials are subjected and each such step towards the finished product would constitute processing in relation to the 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'.

Question 5

Briefly describe whether a raw material supplier can be treated as manufacturer? Are there any exceptions to aforesaid proposition?

Answer

The person carrying out the actual manufacturing process is the manufacturer even if the raw material is supplied by someone else and the goods have been manufactured as per his specifications as the relationship between the raw material supplier and the job worker is on a principal to principal basis. Merely by supplying the raw material, the supplier thereof cannot be construed as the manufacturer. Therefore, it is not relevant as to whether the raw material belongs to the manufacturer or not.

Ownership of raw material is not relevant to determine who the manufacturer is. If the relationship between the raw material supplier and the job-worker is that of a principal and agent, the raw material supplier will be the manufacturer. It may be noted that a person supplying the raw material cannot be considered as hiring the job worker if he does not supervise and control the activities of the job worker. However, if the manufacturer is a dummy or fake unit, then the raw material supplier will be deemed to be the actual manufacturer.

Question 6

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 7

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

Answer

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 8

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. For instance **CCEx., Jaipur v. Mahavir Aluminium Ltd. (2007) 212 ELT 3 (SC)** it was held that converting aluminium ingots (7601.10-old entry) into aluminium billets (7601.01-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**

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(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 9

"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.

The Supreme Court in **CCEx v. Tata Iron and Steel Co. Ltd. 2004 (165) E.L.T. 386** 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 10

Outline any three 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.

Answer

- (i) In relation to iron and steel covered in Chapter 72, Chapter Note 5 provides that the process of galvanization shall amount to manufacture.
- (ii) In relation to audio or video tapes/CDs etc. falling under heading 8523 of Chapter 85, Chapter Note 10 provides that recording of sound or other phenomenon shall amount to manufacture.
- (iii) In relation to aluminium foils falling under heading 7607 of Chapter 76, Chapter Note 3 provides that process of cutting, slitting and printing of aluminium foils amount to manufacture.

Question 11

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 did not have information that the same can be used in any other harbour. 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 also, the Department's stand is not correct and no duty is payable on the goods.

Question 12

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

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.

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 13

Gaseous Ltd., purchased helium gas in bulk from the open market and its quality control officer 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 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) 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 14

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 process of preparing tarpaulin made ups 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 15

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

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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.

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, 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. 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 16

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 unit 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 17

Kaavya was a 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 18

Prakhat Ltd. manufactured 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.

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Revenue issued a show cause notice to Prakhat Ltd. 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 to the foil and 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.

Question 19

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.

Question 20

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

The facts of the problem are similar to 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.

Question 21

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

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

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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, 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.

Exercise

1. *What are the basic conditions for levy of excise duty under section 3 of the Central Excise Act, 1944?*
2. *Describe the constitutional provisions under which central excise duty is imposed.*
3. *Define the nature of excise duty and enumerate the duties leviable under the various excise laws and rules made thereunder.*
4. *Discuss briefly whether excise duty is attracted on the excisable goods manufactured in:*
 - (i) *Special Economic Zone*
 - (ii) *100% EOU*
5. *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*
6. *With reference to the Central Excise Act, 1944, define the following:*
 - (i) *Factory*
 - (ii) *Appellate Tribunal*
 - (iii) *Wholesale Dealer*
 - (iv) *Sale and purchase*
 - (v) *Broker or commission agent*
7. *Discuss whether the following can be considered as excisable goods for the purpose of levying excise duty:*
 - (a) *Turnkey projects*
 - (b) *Lifts and escalators*
 - (c) *Refrigeration or Air conditioning plants.*