

Classification of Excisable Goods

Question 1

Write a short note on Harmonised System of Nomenclature.

Answer

Central Excise Tariff Act, 1985 is based on the Harmonised System of Nomenclature (popularly known as HSN). It is worth specifying that Central Excise Tariff Act, 1985 generally follows HSN pattern but it is not a copy of HSN. HSN is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs and Trade (GATT). Excise Tariff Act is modeled along with international practices. The international practice of adopting a uniform classification has been adopted to facilitate a common understanding of products across countries. In different words, the classification under HSN would be the same across the countries.

Question 2

Discuss the powers of Central Government to amend first and second schedules to Central Excise Tariff Act, 1985.

Answer

The Central Government has the power to amend the Schedules by Notification under Section 5 of the Central Excise Tariff Act, 1985 subject to the condition that such amendment shall not alter or affect in any manner the rates of duty. The relevant provisions of aforementioned section 5 are as under:

- (1) Where the Central Government is satisfied that it is necessary so to do in the public interest it may, by notification in the Official Gazette, amend the First Schedule and the Second Schedule. However, such amendment shall not alter or affect in any manner the rates specified in the First Schedule and the Second Schedule in respect of goods at which duties of excise shall be leviable on the goods under the Central Excise Act, 1944.
- (2) Such notifications shall be laid before each House of Parliament, while it is in session, for a total period of thirty days as soon as it is issued. These thirty days may be comprised in one session or in two or more successive session. If before the expiry of the session, immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Notification or both Houses agree that the Notification should not be issued, the Notification shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that Notification.

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Question 3

How are the 'incomplete or unfinished goods having the essential characteristics of finished goods' classified under the Central Excise Tariff Act, 1985?

Answer

According to Rule 2(a) of Central Excise Tariff Act, 1985 if any particular heading refers to a finished or complete article, the incomplete or unfinished form of that article shall also be classified under the same heading provided the incomplete or unfinished goods have the essential characteristics of the finished goods. For example, railway coaches removed without seats would still be railway coaches. Likewise a car without seat would still be classified as car.

It was held in **Sony India Ltd. V CCE 2002 (143) ELT 411** that Rule 2(a) applies only when components are not subject to further working operation for completion into the finished state.

Question 4

Explain briefly the significance of "trade parlance test" with respect to classification of excisable goods under the Central Excise Act, 1944.

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 5

Does the maxim "Latter the Better" apply in classifying the excisable goods?

Answer

The Central Excise Tariff Act, 1985 incorporates five Rules of Interpretation. Rule 3(c) of the Rules for the Interpretation provides that when goods cannot be classified by reference to rule 3(a) or rule 3(b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration.

Thus the maxim "Latter the Better" applies in determining the classification of the excisable goods.

Question 6

Examine whether the rules for interpretation of tariff schedules applicable to classification of goods are also applicable to interpretation of exemption notification or to determination of the eligibility of goods for exemption under an exemption notification.

Answer

This issue has been dealt by the Supreme Court in the case of **CCEx. Jaipur v. Mewar Bartan Nirman Udyog 2008 (231) ELT 27 (SC)**. In the instant case, the Apex Court clarified that it is a well settled position in law that exemption notification has to be read strictly and interpreted in terms of its language. Where the language is plain and clear, effect must be given to it. The rules of interpretation applicable in the cases of classification under the Tariff cannot be applied to interpretation of exemption notification.

Question 7

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.

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.

Question 8

M/s. Khan Ltd. is a small scale unit manufacturing plastic name plates for motor vehicles as per specifications provided to them by their customers, who are vehicle manufacturers. For purposes of classification under the first schedule to the Central Excise Tariff Act, 1985 the assessee has claimed that the plastic name plates are "parts and accessories of motor vehicles". The Central Excise Department has proposed classification as "other plastic products" in respect of these plastic name plates. The department's view is that the motor vehicle is complete without the affixation of name plates and cannot be treated as a part of the

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motor vehicle. Write a brief note on whether the stand taken by the department is correct in law.

Answer

No, the stand taken by the Department is not valid in law. The plastic name plates should be classified as parts and accessories of motor vehicles on following grounds:

- (i) name plates are solely and exclusively used for motor vehicles.
- (ii) classification as parts and accessories of motor vehicles is more specific while the classification as other plastic products is residuary and more general in nature.

The Department has examined only whether the name plates can be considered 'parts' of motor vehicles, it has not at all considered whether these name plates can be considered 'accessories' of motor vehicle – An 'accessory' by its very definition is something supplementary or subordinate in nature and need not be essential for the actual functioning of the product.

In a similar case of **Pragati Silicons Pvt. Ltd. v. CCEx. Delhi (2007) 211 ELT 534 (SC)**, the Apex Court applying the test laid down in the case of **Mehra Bros. v. Joint Commercial Officer (1991) 51 ELT 173 (SC)** has held that name plates add to convenient use of motor vehicle and give an identity to it. They add effectiveness and value to vehicle and are at very least accessories of vehicles. Thus, even if there was any difficulty in the inclusion of the name plates as 'parts' of the motor vehicles, they would most certainly have been covered by the broader term 'accessory' as car seat covers and upholstery etc.

Question 9

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.

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 10

Dagar Ltd. manufactures coconut oil and sells them in packings of 50 ml or 100 ml. The packing of the oil specifies it to be 'pure coconut oil'. Majority of the consumers use the said

coconut oil as hair oil. Dagar Ltd. classifies the coconut oil as 'vegetable oil' under Chapter 15 of the Central Excise Tariff. However, the Department contends that coconut oil manufactured by Dagar Ltd. is meant for sale as 'hair oil'; therefore, it should be classified as 'hair oil' under Chapter 33.

Explain whether the contention of the Department is correct in law?

Answer

The Department's contention is correct. Circular No. 890/10/2009 CX dated 03.06.2009 has been issued in respect of classification of coconut oil sold in small packs say of 50 ml or 100 ml. When the coconut oil is sold in small containers, following indications are found on containers or labels:

- A. 'hair oil'
- B. 'edible oil'
- C. 'pure coconut oil' or 'coconut oil'

When 'hair oil' is printed on the container/label, it is classified as 'hair oil' under chapter 33. Further, the coconut oil falling under the other two categories ('edible oil', 'pure coconut oil' or 'coconut oil') should also be classified as 'hair oil' under Chapter 33 as they are meant for sale as 'hair oil'.

The circular explains that Chapter Note 2 of Chapter 33 prescribes a condition that Heading No.3305 (which covers hair oil also) applies to products **put up in packing of a kind sold by retail for such use**. Thus, if a particular packing of coconut oil is generally sold in retail as hair oil, in that case, the said product would be classified under heading 3305.

Further, Section Note 2 to Section VI also provides that goods classifiable in Heading 3305 by reason of being put up for retail sales are to be classified in the said heading and in no other heading of the schedule. This Section Note further supports the interpretation that though a product is capable of being classified under more than one heading, even then because of the nature of its retail packing, which is indicative of its use as hair oil, the classification under heading 3305 would get priority. However, if the same coconut oil is packed in say 1 litre or 2 litre packages, which are 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 said product. Therefore, if coconut oil is packed in packages which are generally meant for sale in retail as hair oil, in that case the said product would be classified as hair oil under Heading 3305, even though few consumers may use it as edible oil.

Thus, the circular settles that coconut oil packed in containers upto 200 ml may be considered as generally used as hair oil and shall be classified under Heading 3305.

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Question 11

BCD Auto parts Ltd. is manufacturing rail assembly front seat, adjuster assembly slider seat, rear lock assembly used in motor vehicles for fitment along with seats. Assessee classified the items under Chapter Heading No. 8708 – parts and accessories of motor vehicles of the First Schedule to Central Excise Tariff Act, 1985. Department's contention is that goods manufactured are integral parts of seats and hence have to be classified under Chapter Heading No. 9401.00 – seats.

Examine whether contention of the department is correct by referring to case law, if any, and principles for classification of goods.

Answer

The facts of the given case are similar to the case of **CCEx. Delhi v. Insulation Electrical (P) Ltd. 2008 (224) ELT 512 SC** wherein the Apex Court held that the products manufactured by the assessee cannot be considered as parts of a seat. The rail assembly front seat, adjuster assembly slider seat etc. manufactured by the assessee were used to facilitate fitment of seat, in the motor vehicle and helped the driver and passenger of vehicle in adjusting the seat. The seat was complete and fully functional without rail assembly or adjuster assembly. None of the items manufactured could be considered as part of the seat.

Thus, in view of the above-mentioned decision of the Supreme Court, Department's contention is not correct.

Question 12

Vertex Ltd. manufactures a product known as "MICEL" which is used for killing lice in human hair. Vertex Ltd classifies their product under Tariff sub-heading 3808.10 as an insecticide. However, the Central Excise Officer is of the view that the product is classifiable under Tariff subheading 3003.10 as a medicament as it has therapeutic and prophylactic properties. Vertex Ltd.'s claim is supported by the reports of chemical examiners and the Department of Dermatology & Venereology, which confirm that "MICEL" is an insecticide. Further, various statements of dealers also state that in the market the product is considered to be an insecticide. The claim of the central excise officer is substantiated by the fact that Chapter Note 1(c) of Chapter 38 indicates that Chapter 38 would not cover "Medicaments under Heading No. 3003 or 3004". Chapter Heading 2(i) of Chapter 30 defines "Medicament", inter alia, as a product comprising of two or more constituents which have been mixed or compounded together for therapeutic or prophylactic use.

Give your opinion on the issue with the help of decided case laws, if any.

Answer

The facts of the given problem are similar to the case of **Sujanil Chemo Industries v CC.Ex., & Cus., Pune 2005 (181) E.L.T. 206 (S.C.)** wherein the Supreme Court observed that even though, in normal parlance, a product might be considered to be an insecticide if that product

had any therapeutic and prophylactic use, but for the purposes of classification, that product could not fall under Chapter 38. The Apex Court clarified that any medicine or substance which treats disease or is a palliative or curative is therapeutic. Therefore, since Licel cured the infection or infestation of lice in human hair, it was therapeutic. Further, it was also prophylactic in as much as it prevented disease which would follow from infestation of lice. Thus, the Apex Court held that 'Licel' was a product which was used for therapeutic and prophylactic purposes. It would thus be a Medicament within the meaning of the term "Medicament" in Note 2 of Chapter 30 and would be excluded from Chapter 38.

Applying the ratio of the above decision, "MICEL" will be classified as a medicament under Tariff subheading 3003.10 and not as an insecticide under Tariff sub-heading 3808.10.

Note: This case was maintained in 2008(227) ELT A166 (Supreme Court).

Exercise

1. *Describe the Rules for Interpretation of the Schedules to the Central Excise Tariff Act, 1985.*
2. *How are the finished goods that are removed in an unassembled condition or in a disassembled condition such as semi-knocked down or completely knocked down condition are classified under the Central Excise Tariff Act, 1985?*