

Classification of Goods

Question 1

What is the purpose of interpretation rules regarding Customs Tariff? Do they form part of the tariff schedule? Explain the Akin Rule of interpretation.

Answer

The Customs Tariff has a **set of six rules for interpretation** of the tariff schedule and three general explanatory notes. The six rules of interpretation and three general explanatory notes are integral part of the schedule. The **purpose** of their inclusion is:

- (i) to give clear direction as to how the nomenclature in the schedule is to be interpreted and
- (ii) **to give statutory force to the interpretation rules and the general explanatory notes.**

Rule 4 of the rules of interpretation is called as **akin rule**. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of the rules of interpretation shall be classified under the heading appropriate to the goods **to which they are most akin**.

Question 2

Briefly explain "standard unit of quantity" with reference to the First Schedule to the Customs Tariff Act, 1975.

Answer

Standard Unit of Quantity is a unit of measure. It has been prescribed in column 3 of the First Schedule to the Customs Tariff for each tariff item to facilitate the collection, comparison and analysis of trade statistics. The unit of measure is indicated by abbreviations. Some abbreviations are cc-cubic centimeter, cm-centimetre(s), g-gram(s), mt- Metric Tonne.

Question 3

Write a brief note with specific reference to rule 1 of the Rules of Interpretation of the First Schedule to Customs Tariff Act, 1975.

Answer

Rule 1 of the general rules for interpretation states that the titles of sections, chapters and sub-chapters in the First Schedule to the Customs Tariff Act, 1975 are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or chapter notes do not otherwise require, according to the subsequent rules.

Question 4

Tony India imported various components in different consignments separately on the basis of valid import licences. The Department has taken a stand that in view of the provision in Rule 2(a) of the Interpretative Rules, the goods will attract import duty as if they were finished goods and the benefit of an exemption notification exempting only the components will not be available. Write a brief note with reference to decided case law whether the stand taken by the Department is correct in law.

Answer

No, the stand taken by the Department is not correct in law. **Rule 2(a)** of the Interpretative Rules applies when all the components are imported at the same time and when a simple process is required for assembly. This view was also confirmed by the Supreme Court in **CC v. Sony India (2008) 231 ELT 385 (SC)**, wherein it has been held that **rule 2(a) applies only if all the components are presented at the same time for custom clearance.**

In the given case, since the various components are imported in different consignments separately at different points of time, rule 2(a) will not apply. Therefore, import of components will be treated as import of components and not of finished goods for the purpose of benefit of exemption notification.

Question 5

India Car Co. is manufacturing passenger cars and has entered into a joint venture agreement and collaboration with Videshi Car Co. India Car Co. imported from Videshi Car Co. a shipment of 24 CKD packs (completely knocked down condition) of passenger car components. They filed Bill of Entry for clearing the goods, which were claimed to be components of motor cars. They also claimed benefit of a Notification exempting components, including components of motor cars in semi-knocked down packs and completely knocked down packs.

*The Adjudicating Authority held that the imported components being complete cars in CKD packs, had the **essential character** of the finished product and as such the consignment were to be treated as motor cars and not components. It was also held that India Car Co. was **not entitled to the benefit of the notification as the notification was only for components.***

The questions for consideration are:

- (i) *Whether the CKD packs imported into the country could be considered to be motor cars for the purpose of classification and clearance?*
- (ii) *Whether India Car Co. is entitled to the benefit of exemption notification?*

Answer

The facts of the given case are similar to the facts of the case of **CC, Bangalore v. Maestro Motors Ltd. – 2004 (174) ELT 289 (SC)** decided by the Apex Court.

- (i) As per interpretative **Rule 2(a) of the General Rules of Interpretation of Customs**

4.3 Customs and Foreign Trade Policy

Tariff, any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled. This rule lays **emphasis on the essential character of the goods**. Thus **goods which have the essential characteristics of finished goods will be classified under the same heading in which the final product has to be classified**.

In the **Maestro Motors case**, the passenger car components were imported in CKD packs. Thus, what was imported was completely knocked down cars. The components imported had the essential character of a complete car even though presented in unassembled form. Thus, in view of Rule 2(a) of the General Rules of Interpretation of Customs Tariff, the Supreme Court held that the components in CKD packs would be classified as motor car.

Therefore, in case of India Car Co. also, the CKD packs should be classified as cars for the purpose of classification and clearance.

- (ii) In the *Maestro Motors* case, it was observed by the Supreme Court that a **notification has to be interpreted in terms of its language**. If in the notification, exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, then the Rules of Interpretation must apply. In that case even for the purposes of the notification, the goods will be classified in the same manner as they are classified for purposes of payment of customs duty. However, where the language of the notification is plain and clear effect must be given to it.

In this case the notification exempted components, including components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs. The Apex Court held that for purposes of levy of customs duty, by virtue of interpretative Rule 2(a) of the General Rules of Interpretation of Customs Tariff, the components in a completely knocked down pack would be considered to be cars. However, **in view of the clear language of the Notification, the components including components in completely knocked down packs would be exempted**.

Thus, in view of the abovementioned judgment, the **components in CKD packs imported by India Car Co. would get the exemption under the Notification**, even though for purposes of classification and clearance they may be considered to be motor cars.

Question 6

M/s Hind IT Co. imported laptops with Hard Disc Drives (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

Answer

The action proposed by the Department is correct in law. The facts of the case are similar to **CCus. v. Hewlett Packard India Sales (P) Ltd. (2007) 215 ELT 484 (SC)**.

In this case, the Supreme Court observed that the pre-loaded operating system recorded in HDD in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit and assessed accordingly.

However, if the operating system had been imported as **packaged software like an accessory**, then the benefit of exemption notification would have been available on it.

Question 7

XYZ ice cream company imported **cone containers** made from printed aluminium foils which according to the assessee were classifiable under Chapter 76: **"Aluminium and Articles thereof"** in section XV of the first schedule to the Customs Tariff Act, 1975. According to the Revenue, these were classifiable under Chapter 48: **"Paper and Paperboard; articles of paperpulp, of paper or paperboard"**. The revenue's view was that where composite goods are made of different components and cannot be classified by reference to Rule 2 of the Interpretative Rules, then the classification has to be according to the principles contained in Rule 3. The classification has to be as if the goods consists of the material or components which give them their **essential character**. Since the contents of the material in this case was 70.7% paper, that was the essential component of the cone containers for ice cream and merit classification under Chapter 48.

The chapter notes to Chapter 48 read as follows:

Notes :

- 1.
2. This chapter does not cover;
 - (a)
 - (n) metal foil backed with paper or paper board (Section XV)

Discuss briefly whether the action proposed by the Revenue is correct is law.

Answer

In the given case, the Chapter Note 2(n) specifically excludes metal foil backed with paper or paperboard from the purview of Chapter 48. The aluminium cone foil containers made up of 70.7% paper cannot be included under Chapter 48 by mere reference to the title of the Chapter 48: "Paper and Paperboard; articles of paper pulp, of paper or paperboard". The contention of the Revenue that the Chapter Note will not apply because of Rule 3(b) of the Interpretative Rules, is not correct as it has been specifically provided in Rule 1 of the Interpretative Rules that "the titles of sections and Chapters are provided for ease of reference only; for legal purposes classification shall be determined according to the terms of the

4.5 Customs and Foreign Trade Policy

headings and any relative section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained”.

Therefore, only **if there is no specific Chapter Note requiring otherwise**, the subsequent rules i.e., rule 2 onwards, including rule 3(b) of the Rules for Interpretation, can be invoked. However, in the present case, **Chapter 48 – Note – 2(n) is very specific leaving no option to resort to Rule 3(b)**.

The argument that the Interpretative Rules override the Chapter Note is not acceptable in view of the specific enumeration that the rules do not have any other purpose other than ease of reference.

Hence, the Revenue’s contention that the cone containers should be classified under Chapter 48 is not correct.

Question 8

ABC Company Ltd. had imported brine shrimp eggs. This was classified as “prawn feed” for customs duty purposes under chapter heading No. 2309 of the Customs Tariff schedule which includes use as animal feed. The department’s view was that this should be classified under chapter heading No. 051199 as non-edible animal products unfit for human consumption. M/s. ABC Company Ltd. provided literature to support their contention that the imported material contained little organisms/embryos which later became larva that were fed to the prawns. Therefore, according to the importers, the nature and character of the product was not changed or altered by nurturing or incubation. Hence, the classification should be as prawn feed under chapter heading No. 2309.

Decide with the help of case law, if any, whether the contention of the assessee, M/s. ABC Co. is correct in law.

Answer

Yes, the contention of the assessee is justified in law. The facts of the given case are similar to the case of **Atherton Engineering Co. Pvt. Ltd. v. UOI 2010 (256) ELT 358 (Cal.)**. In the instant case, the Court noted that it was the use of the product that had to be considered in the instant case. If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the instant case, it examined whether the nature and character of the product remained the same.

The Court opined that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. The larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.

Hence, the Court held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.

Question 9

Sun Synthetic Fibres was an importer. It had imported one unit of the equipment which was declared as “High Speed Draw Warping Machine with 1536 ends along with essential spares”. The importer claimed that these goods were covered under an exemption notification.

Under the said notification, exemption was available in respect of the High Speed Warping Machine with yarn tensioning, pneumatic suction devices and accessories. Undisputedly, the assessee had imported High Speed Warping Machine, but it had drawing unit and not the pneumatic suction device. The Textile Commissioner, who was well conversant with these machines, had stated that the goods imported by the assessee were covered under the exemption notification. He further stated that drawing unit was just an essential accessory to the machines imported by assessee and, therefore, was covered under the said notification. The opinion so furnished is taken note of by the Tribunal while granting relief to the assessee. Revenue contended that the machine imported by the assessee was not in consonance with the exemption notification and, therefore, the benefit of exemption should not be available to the assessee.

Discuss whether the contention of the Revenue is sustainable in law, with the help of decided case law, if any.

Answer

No, the contention of the Revenue is not sustainable.

The facts of the given case are similar to the case of **CCus. (Import), Mumbai v. Konkan Synthetic Fibres 2012 (278) E.L.T. 37 (S.C.)** wherein the Supreme Court stated that it is a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance.

The Supreme Court further elaborated that when no statutory definition is provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding, i.e. the understanding in the opinion of those who deal with the goods in question would be the safest guide. Hence, the Supreme Court, relying on the opinion of the Textile Commissioner, concluded that the imported goods were covered under the exemption notification.

Exercise

1. *How will you determine the customs duty where imported goods consist of articles liable to different rates of duty?*
2. *Explain rule 3 of the Rules for Interpretation of the Customs Tariff.*