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India Juris

International Law Firm

F-116, Lajpat Nagar-1, New Delhi, India - 110024
T: +91-11-29814816, 29814817, F: +91-11-29815116
E: info@indiajuris.com W: www.indiajuris.com



Classification of Goods in Excise

All manufactured goods are not same in their characteristics and also it is not possible for them to carry the same rate or amount of duty. It is quite tedious to identify all products individually. Hence, we try to identify the products through groups and sub-groups and then decide a rate of duty on each group/ sub-group. This is called 'Classification' of a product, which means determination of heading or sub-heading under which the particular product will be covered. The liability of payment of excise is on the manufacturer. After the establishment of the liability of payment of excise, the most important question that arises is about the amount of duty payable. For this very purpose, first we correctly classify the goods and then try to find out its assessable value.

The Central Excise Tariff Act, 1985 (CETA) classifies all the goods under 96 chapters grouped in 20 sections. A specified code is assigned to each item. Rates of central excise duty are specified in the First Schedule to the Central excise Tariff Act. Salient features of the Tariff are as follows:

1. CETA is based on International Convention of Harmonized System of Nomenclature (HSN), called Harmonized Commodity Description and Coding System. This is an International Nomenclature Standard adopted by more than 130 countries including India for international trade between the member countries. However, there are wide variations between HSN and CETA.
2. There are two schedules in Central Excise Tariff Act, 1985. Rates of the excise duty are specified in the First schedule. This is the basic excise duty (i.e. Cenvat duty) leviable on various products. However, the second schedule gives the list of items on which special excise duty is payable. It contains only few items.
3. Central Excise Tariff is divided in 20 sections. Each of 20 sections is related to a broader class of goods. Each of the section is divided into various chapters. For example, Section XI relates to Textile and Textile articles and within that section chapter 50 is silk, chapter 51 is wool, chapter 52 is cotton, chapter 53 is other vegetable textile fabrics, chapter 61 is articles of Apparel and so on. There are 96 chapters out of which five are blank.
4. Each chapter is further divided into various headings depending on different types of goods belonging to same class of products. The headings are sometimes divided into further sub-headings.
5. The Central Excise Tariff is designed in such a way that all groups relating to same industry and all goods obtained from the same raw material lies under one chapter in a progressive manner as far as possible. So far as practicable, goods are classified beginning with raw materials and ending with finished products within the same products.
6. The Central Excise Tariff contains Rules for Interpretation to ease the classification of goods. These are statutory rules. If the wordings of the headings/ sub-headings read with Section Notes and Chapter Notes is not enough to come on to the conclusion of the issue, we take assistance of the Rules of Interpretation of the schedule. This Rules of Interpretation has to be applied sequentially.



Steps of Classification

1. First of all we refer the heading and Sub-heading. After that we read corresponding Section Notes and chapter notes. If there is no ambiguity or confusion; the classification is considered to be final.
2. If the meaning of the word is not clear then we refer to the trade parlance.
3. If goods are incomplete or un-finished but classification of finished product is known, we try to find out that whether the un-finished item has essential characteristics of finished goods or not. If it possesses the essential characteristics of the finished goods; we classify it in the same heading.
4. In case of any further ambiguity, we try to find out which heading is specific and which heading is more general. Specific heading has to be given preference.
5. In spite of the abovementioned steps the problem is not resolved, we try to find out which material or component is giving 'essential' character to the goods in question.
6. If both are equally specific, we try finding out which comes last in the tariff.
7. However, if it not possible to find any entry which matches the goods in question then we find goods which are most akin.

However, the manufacturing process also plays an important role in the classification of goods. Even the addition of power in the course of manufacture also determines the rate. Different instances are there.

Recent development on Indirect Taxes

Central Board of Direct Taxes has been directed by the Supreme Court to draft a uniform policy regarding appeals in the cases it had lost. In some cases it appeals to the higher court to claim taxes; but in some cases it does not. There is no definite criterion for appeals, the court said in the case Commissioner vs. Doaba Steel Rolling Mills. There should be strict parameters for the guidance of the field staffs for deciding whether to appeal or not.

The indirect tax revenue has increased substantially after introduction of VAT. As states are gearing up for the introduction of GST the revenue collection may further increase. The election of the BJP leader Shushil kumar Modi as the chairperson of the Empowered committee of state finance minister should also be considered a positive step in the direction of introduction of GST.

The union cabinet gave its approval for introducing a Legislative Amendment Bill to amend Section 28 of the Customs Act, 1962 to retrospectively recognize specified Customs officers as



'Proper officer' for assessment of Customs duty. After this amendment a large number of Show Cause Notices involving substantial Customs revenue may be validated. These SCNs are considered to be invalid as a consequence of a judgment of the Hon'ble Supreme Court. The Apex court vide its order dated 18.02,2011 in the case of Commissioner of Customs vs. Sayed Ali & Anr has held that only a custom officer who has been assigned the specific functions of assessment and re-assessment of customs duty in the terms of section 2(34) of the Customs Act, 1962 is competent to issue notice under section 28 of the said act.

Indirect Tax Case Laws

Commissioner of Central Excise vs. M/s Gurukripa Resins Pvt. Ltd (Supreme Court of India)

Brief fact:

Civil appeal under section 35-L (b) of the Central Excise Act, 1944 questioning the correctness of the orders passed by the Tribunal. The assessee, a body corporate, is engaged in the manufacture and clearance 'Rosin' and 'Turpentine oil'. The assessee was of the view that finished goods were being manufactured without aid of power. They classified the goods so that they may attract nil rate of duty. As per revenue, the goods were manufactured with the aid of power. Thus they would attract the rate of duty @ 16%. The Tribunal went against revenue as per the letter no. B-36/u/77- TRU dated 10th/ 16th Jan, 1978 which is the clarification for the purpose of notification no. 179/77- CE dated 18th June, 1977. Thus the same appeal filed by the commissioner of central excise. In this case the manufacturing process becomes quite significant.

The short question in issue is whether or not the process of lifting of water with the use of power to the extent and for the purpose mentioned above constitutes a process in or in relation to the manufacture of goods.

Held

The Apex court is of the view that if any operation in the course of manufacture is so integrally connected with the further operations which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in or in relation to the manufacture must be deemed to be one carried on with the aid of power. The uplifted water with the help of power is an essential part in the manufacturing process as it sprinkles on the condensers with the force of gravity for the condensation of the 'Turpentine oil'. Also Tribunal has failed to notice and consider the effect and implication of Circular No. 38/38/94-CX dated 27th May, 1994 issued by the CBEC, withdrawing all instructions/guidelines/ tariff advices issued in respect of the erstwhile First schedule to the Central Excise and Salt Act,1944, which obviously included the 1978 clarification. Resultantly all the orders passed by the Tribunal are set aside and the appeal are allowed.



Latest Notifications/Circulars

Excise:

Non-Tariff:

[17/2011 - C.E \(N.T.\)](#), dated 18-07-2011, amendment to the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 20/2006-Central Excise (N.T), dated the 30th September, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 30th September, 2006

[16/2011 - C.E \(N.T.\)](#), dated 18-07-2011, Form E.R.1 for monthly return for production and removal of goods and other relevant particulars and CENVAT credit.

Service Tax (Circular):

[144/2011](#), Regarding clarification on "Completion of Service".

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