

CLASSIFICATION UNDER THE CUSTOMS TARIFF ACT

The classification of goods would continue to be very relevant and import unless all the goods attract the same rate of duty. It is impossible to envisage a situation where all the excisable goods will attract the same rate of duty. For instance, it is not possible to imagine that a medicinal item and a cosmetic item can be subjected to the same rate of duty. Similarly, an item which is going into research and development of or nuclear reactor or for atomic energy projects or any other Programme concerning to public health, safety or defence would attract the same rate of duty as for goods which are meant for either use as a comfort or as a luxury. Keeping in view the socio-economic objectives, considerations of public health, national security and the interest permitting research and development as well as the needs of agriculture which is becoming increasingly mechanized need to protect small scale sector and non-power operated activities and host of other factors, the Government charges customs duty at different rates on different products. So long as, there are different rates notified for different commodities, the need for proper classification would always remain.

Classification of excisable goods has an important bearing on a number of other connected questions of both substantive and procedural consequences. The substantive relate to the following:-

- a. Whether at all the classification has been done correctly accordingly to the proper rules of classification
- b. Whether the benefit of any exemption from duty partial or complete, is available appropriate to the relevant classification.
- c. Whether the assessee can claim certain special benefits of concession / duty exemption under a notification.

The procedural questions may relate inter alia to the following:

- a. Whether any particular procedure as to the compliance with the duty exemption under a notification appropriate to the relevant classification has been followed or not;
- b. In some cases, there could be other procedural stipulations like making payment only by a cheques crossed account payee in relation to sale made to certain categories of persons and if this condition is not satisfied in a given case, the duty concession or exemption as the case might be totally denied to the assessee.
- c. In some cases, there could be rules of compliance to ensure proper "end use" certificate.
- d. There could be stipulation as to production of certificate from Ministry of Health/ Environment and Forest/Defence/District Collector or any such other authority.

Thus, a wrong classification of goods might not only mean payment of higher duty in some cases by the assessee but also would have further spin-offs in the matter or eligibility for any concessions under any appropriate notification had the product been properly classified. In yet another cases, a wrong classification of goods in a heading might lead to demand of higher duty

with its attendant consequences, viz. demand of duty for an extended back period of five years on grounds of suppression of facts, willful mis-representation or fraud, envisaged under section of the Act.

PRINCIPLES OF CLASSIFICATION

Customs follows Harmonized System of Nomenclature (HSN) systems of classification of goods. The entire classification has been compressed into 98 chapters which have in turn been accommodated under 21 Sections. It consists of eight digit system to facilitate precise classification of goods. The superiority and distinctiveness in the customs Tariff consist in the detailed section notes and chapter notes which facilitate the proper classification of goods. These section notes and chapter notes required to be carefully read before arriving at the classification.

Aids to Classification:- (Section Notes/ Chapter Notes)

Section notes and chapter notes given in each chapter of the Customs Tariff Act contain valuable guides to classification of goods. Therefore, it is imperative that in order to identify the correct tariff classification, the entries given in the different headings of the relevant chapters has to be read along with the connection section notes and chapter notes and it is quite possible that what is perhaps given in one of the headings of a particular may be excluded in the Section or chapter notes.

Interpretative rules:- The tariff contains a set of interpretative rules, viz. Rule 1 to Rule 4. These rules are nothing but a scientific set of principles which will be applied while arriving at a classification of a particular product. These rules need not be referred to when the section notes and Chapter notes or the very entries in the tariff. These rules for interpretation of tariff are applicable only when classification of a product cannot be determined in accordance with Headings for Section/ Chapter Notes are very clear about the classification. However, where the section and chapter notes do not offer much help or when even in accordance with the common parlance test the description of the products is incapable of being identified with a particular heading in the Tariff, these rules can be pressed into service as statutory aids in arriving at proper classification.

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters 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 Notes do not otherwise require, according to the following provisions:

2. (a) 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.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for

packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

PRINCIPLES OF CLASSIFICATION AS ENUNCIATED BY COURTS

Various High Courts and the Supreme Court have, over the year's evolved well-established principles of classification. These principles are relevant even under the new Tariff in spite of the new Tariff having sufficient guidance in the form of Chapter notes, section notes and interpretative rules. Some of the principles are discussed hereunder:-

Common Parlance test/ Trade Parlance test:-

The most resorted and favored test is the common parlance test. This is also referred to by various other expressions like ordinary parlance, market parlance, popular sense meaning, user's parlance, common and understanding, etc. The superiority of this test lies in the fact that the articles of manufacture are bought and sold in the market by a particular name and description which is commonly known and understood by the persons dealing with those goods and therefore it is only such an understanding by such categories of people which should determine the proper description of the item. But where a statute has defined a particular article or term in a specified manner leaving no scope for any ambiguity whatsoever this test should not be applied as was held by the Karnataka High Court in Union of India vs. Rollatainers Limited (1991-55-ELT-317).

Dictionary meaning:-

Dictionary meanings are not always and safe guide because dictionaries give different shades of meaning. Even where the goods were produced before the Supreme Court in evidence of classification, it was held that the goods shall be classified as per trade understanding and not on the basis of dictionary, technical or scientific meaning –Purewal Associates Ltd. vs. CCE (1996-87-ELT-321-SC).

Trade meaning is to be preferred, and where such trade meaning is not available, ordinary meaning is to be preferred over scientific or technical meaning – CCE vs. Krishna Carbon Paper Co. 1988-37-ELT-480-SC.

Trade commerce and customers understanding and not dictionary meanings should govern the classification on goods – CCE. Vs. Sun flame Industries (2000-119-ELT-726-Large Bench-Tri.).

Technical Meanings:-

Technical Meaning are to be taken only on a selective manner and not to be resorted to be routine.

Catalogue/Pamphlets:-

These are relevant in classification matter but in some of the cases various high courts have held that catalogue and Pamphlets were not decisive in classification.

End use of the product:-

End use is not relevant for the purpose of classification as held by the Supreme Court in the case of Dunlop India vs. Union of India (1983-ELT-1566). The Calcutta High Court while classifying the ultramarine blue as a pigment had ruled in Nilsin Company vs. Collector of Central Excise (1985-22-ELT-739) that end use and physical constitution are relevant only if they do not differ from the market parlance.

Functional Test:-

Functions test is the correct test for determining the character of a product. Function of a product is determined by mental association in the mind of the consumer between the article and the need its supplies in his life.

Quality of Articles:-

The quality of the article produced is not decisive of the classification of the goods. In one of the cases, the Delhi High Court held that in classification matters it makes no difference whether the quality is prime or defective.

ISI Specification:-

ISI specification have been held to be not ignorance in classification. Views expressed by ISI can be looked into with certain amount of credibility. It was also further held that ISI definition of term should be preferred over British Standard Institution's definition. In some cases, courts have held that opinion on Indian Standards Institute is preferable to opinions of other technical experts.

Assessee's own understanding:-

In fiscal legislations dealing with commodity taxes a subjective understanding by an assessee of the nature of the products is not at all relevant in classification; what is relevant is the classification particularly attributed by people who deal in the goods.

Opinion of experts:-

Opinion given by experts like chemical technologists, leather technologies, paper technologists, pharmacists, etc. are of great supportive and evidentiary value in classification particularly where the product itself is of a highly technical nature.

Burden of proof:-

It has been held by the Bombay High Court in Sandoz India Ltd vs. UOI (1980-ELT-696) that the burden of establishing a proper classification of goods is on the Department.

It is worth noting that in the past when different commodities were attracting different rates of duty, classification disputes were not numerous. But over a period the government of India promised that rates of taxes will be stable conducive to growth compliance and investments. Further, India becoming a signatory to GATT is required to reduce the duties of customs on par with other Member countries and in order to achieve this, the Government year after year has been in the process of reducing the peak rate of customs for non-agricultural product from 12.5% to 10% and in the current year's budget, the peak rate for most of the items was reduced to 7.5%. Therefore in respect of those goods there would exist hardly any classification disputes rate of duty being the same. In the near future, when the rate of duty may converge into a single rate, there would be no need for classification dispute at all.

