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Classification of Imported and Exported Goods

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Introduction of Schedule I to CTA' 75

- ❑ Schedule I to CTA, 1975 contains – 98 chapters grouped under 21 sections –
 - ❑ Section
 - ❑ Chapters
 - ❑ Chapter Notes
 - ❑ Heading
 - ❑ Sub-heading

- ❑ It is designed based on Harmonised System Nomenclature (HSN). The Harmonized Commodity Description and Coding System is developed by World Customs Organization under General Agreement on Trade and Tariff (GATT) – adopted by 140 countries. The coding system consists of 8 digits. The objective of HSN is to bring the uniformity of classification of the goods in all the countries who are members of GATT. HSN do not have legal value since they have not been adopted.

- ❑ Along the lines of HSN, the custom tariff has a set of Rules of Interpretation of the First Schedule, i.e. Import tariff schedule and General Explanatory notes.

- ❑ Rules of Interpretation – SIX and General Explanatory Notes - THREE

Introduction of Schedule I to CTA' 75

Illustration

An assessee classified his product as per Central Excise Tariff subject to nil rate of duty. The Department contended that when the entries in the Harmonized System of Nomenclature (HSN) and the Central Excise Tariff are not aligned, reliance should be placed upon HSN for the purpose of classification of goods under the said Tariff.

Relying upon the HSN for the purpose of classification of the impugned product, the Department classified it under another heading attracting 8% duty. Do you think that Department's plea is valid in law? Discuss briefly, with reference to a decided case law, if any.

[May 2010, Q.2 (a), 5 Marks]

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.

General Explanatory Notes

1. Relevance of one dash ["-"] and two dash ["- -"] –

- a. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", → the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading.
- b. Where, however, the description of an article or group of articles is preceded by "- -", → the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-".
- c. Where the description of an article or group of articles is preceded by "----" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. Meaning of abbreviation “%” in relation to the rate of duty - The abbreviation “%” in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. Standard rate of duty applicable if no preferential rate specified - In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

Rule of Interpretation of the First Schedule to the CTA

Rule 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:*

Meaning

The above rule lays the following propositions –

1. The titles of sections, chapters and sub-chapters do not have any legal force.
2. Terms of headings read with relative section and chapter notes are legally relevant for the purpose of classification.
3. The rules of interpretation need not be resorted to when classification is possible on the basis of description in heading, sub-heading, chapter notes and section notes.
4. Notes of one chapter or section cannot be applied for interpreting entries in other chapters or sections.

Eg – Product: Letter closing and sealing machine

Sub-heading 8422 30 00: Machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages

Sub-heading 8472 30 00: inter alia covers machines for closing or sealing mails.

Both the headings appear to be relevant for the product in question. However, chapter note 2 to chapter 84 inter alia provides that Heading No. 8422 does not cover office machinery of Heading No. 8472. Therefore, the product in question will be classified under 8472 30 00

Rule of Interpretation of the First Schedule to the CTA

Rule 2 (a) Classification of Incomplete/Unfinished Articles

- (i) 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 articles has the essential character of the complete or finished article.
- (ii) 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.

- Eg –** (a) Railway coaches removed without seats would still be railway coaches.
(b) A car without seats would still be classified as car.

Note – Only goods requiring minor adjustments can be construed as having the essential character – Only goods requiring minor adjustment would be construed as having the essential character. Those requiring major processes like turning, grinding, broaching, groove cutting, heat treatment, surface treatment etc, cannot be construed as having the essential character of complete and finished articles and cannot fall within the scope of rule 2(a) of the General Interpretative Rules.

Rule of Interpretation of the First Schedule to the CTA

Rule 2 (b) Classification of Mixtures/Combinations of a Material/Substance with Other Materials/Substances

- (i) 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.*
- (ii) 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.*
- (iii) The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*

Eg – (a) The term coffee will include coffee mixed with chicory

(b) Natural rubber will cover a mixture of natural and synthetic rubber

Rule of Interpretation of the First Schedule to the CTA

Rule 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:

Rule 3(a) Specific over general

- (i) The heading which provides the most specific description shall be preferred to headings providing a more general description.*
- (ii) 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*

Eg – Electric shaving machine was classifiable under following two headings -

Heading No. 85.10: Shavers and hair clippers with self contained electric motors

Heading No. 85.09: Electro-mechanical domestic appliances with self contained electric motor

The said product in the above instance would be classifiable under heading No. 85.10 as heading No. 85.10 is more specific as compared to heading no. 85.09

Rule of Interpretation of the First Schedule to the CTA

Rule 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:

Rule 3(b) Essential character principle

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.

Note –

1. Sub-rule (b) would apply only if the goods cannot be classified under sub-rule (a). This sub-rule provides that composite goods should be classified on the basis of that material or substance that gives it its essential character.
2. In order to find out whether the incomplete article as imported has the essential character of the completed article, the tests to be applied would be whether the imported article has attained the approximate shape or outline of the finished article or part and whether it can only be used for completion into the particular finished article.

Eg – Product – Lead pencil with an eraser at the back

Classification: Though the above product is composite goods, the essential character is that it is a pencil and the attachment of eraser at the stub is only for the purpose of adding convenience to the user. Therefore, it shall be classified as a pencil and not as an eraser.

Rule of Interpretation of the First Schedule to the CTA

Rule 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:*

Rule 3(c) Latter the better

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.

Relevant case law – Mahindra and Mahindra vs CCE 1999 (109) ELT 739 (Tribunal)- maintained by SC

When the goods cleared by assessee were equally classifiable under the following two headings -

Heading No. 87.03: Motor cars and other vehicles principally designed for the transport of persons.

Heading No. 87.04: Motor vehicles meant for transport of goods.

It was held that heading 87.04 occurs last and as both the headings equally merit classification, goods shall be classified under 87.04 applying the interpretive Rule 3(c)

Rule of Interpretation of the First Schedule to the CTA

Rule 4 Akin Rule - 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.

Eg - Product: Plastic films used to filter or remove the glare of the sun light, pasted on car glass windows, window panes etc.

Classification: These goods do not find a specific entry in the tariff schedule. However, heading 3925 30 00 covers Builder's wares of plastic not elsewhere specified – shutters, blinds (including Venetian blinds) and similar articles & parts thereof. Even though the product in question is not a builders ware, they are most akin to plastic blinds and hence it can be classified under 3925 30 00 heading.

Rule of Interpretation of the First Schedule to the CTA

Rule 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.

Rule 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.

Project Imports

- Project Imports are the imports of machinery, instruments, and apparatus etc., falling under different classifications, required for initial set up of a unit or for substantial expansion of an existing unit. In a project several different items are required, each of which is importable at different rates of customs duties. Hence, it becomes very complicated to make assessment for such project imports. Therefore, one consolidated rate of customs duty has been made applicable for all items imported under a project irrespective of the nature of the goods and their customs classification. Further, individual exemption notification will apply even for items grouped under the said heading of the customs tariff liable to duty at the project rate as per recent SC judgement.
- The items eligible for project import are specified in Heading 9801 of the Customs Tariff Act, 1975. These include all items of machinery, instruments, apparatus and appliances, components or raw materials, etc for initial setting up of a unit or for substantial expansion of the same. The spare parts, raw material and consumables stores upto 10% of the value of goods can be imported.
- This scheme has been made applicable to Industrial Plants, Irrigation Projects, Power Projects, Mining Projects, Projects for Oil or Mineral Exploration and other projects as may be notified by the CG.

Case Laws

- **Saurashtra Chemicals vs CC 1986 (23) ELT 283 (Tri-LB) [approved by SC]**
 - This case brings out the importance of section notes and chapter notes in the classification of goods. The Tribunal observed that Section Notes and Chapter Notes in the Customs Tariff are a part of the statute and thus are relevant in the matter of classification of goods. These notes sometimes restrict and some times expand the scope of headings. The scheme of the Customs Tariff is to determine the coverage of headings in the light of section notes and chapter notes. These notes, in this sense have an overriding effect on the headings.
- **CC vs Maestro Motors Ltd 2004 (174) ELT 289 (SC)**
 - In this case, the Court observed that if a tariff heading is specially mentioned in exemption notification, the general interpretative rules would be applicable to such exemption notification. But, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for the purpose of classification, it may be otherwise.
- **CC vs Hewlett Packard India Sales (P) Ltd. 2007 (215) ELT 484 (SC)**
 - In this case, the assessee was engaged in the manufacture of, and trading in, computers including Laptops (otherwise called 'Notebooks') falling under Heading 84.71 of the CTA Schedule. They imported Notebooks (Laptops) with Hard Disc Drivers (Hard Discs, for short) preloaded with Operating Software like Windows XP, XP Home etc. These computers were also accompanied by separate Compact Discs (CDs) containing the same software, which were intended to be used in the event of Hard Disc failure.
 - The assessee classified the software separately and claimed exemption. The court held that without operating system like windows, the laptop cannot work. Therefore, the laptop along with software has to be classified as laptop and valuation to be made as one unit.