

Classification of excisable goods

Introduction

The actual amount of excise duty payable on excisable goods, is dependent on the rate of duty. The rate of duty can be determined based on the classification of goods. Some of the goods are exempted or have nil return of duty, hence, to determine the rate of duty, a proper classification of goods under the tariff headings or sub headings is required.

The Central Excise Tariff Act, 1985 (The act) prescribes the rate of duty for each item categorized under heading and subheading. The categorization is based on the Harmonised System of Nomenclature (HSN), which is an internationally accepted product coding system formulated under the auspices of the General Agreements on Tariffs and Trade (GATT).

The act has been divided into 3 schedules, namely –

- First Schedule – Specifies the item on which basic excise duty is levied. The said schedule is divided into 20 sections and 96 Chapters.
- Second schedule – Specifies the item on which special excise duty is leviable, w.e.f. 01/03/2006 all goods have been exempted from special excise duty.
- Third Schedule – Deemed manufacture in relation to various specified goods.

Interpretative Rules to first schedule of central excise tariff act

The Central Excise Tariff Act, 1985 incorporates five Rules of interpretation, which together provide the necessary guidelines for classification of various products under the schedule. As regards the Interpretative Rules, the classification is to be first tested in the light of Rule 1. Only when it is not possible to resolve the issue by applying this Rule, recourse is taken to Rules 2, 3 & 4 in seriatim. The provision of the individual Rule is as follows:

Rule 1 – General Rule of classification

This rule provides that Section and Chapter titles are only for ease of reference and, therefore, do not have any legal bearing on the classification of goods, which is determined according to the terms of headings and relevant section or Chapter notes.

Thus goods are to be classified in terms of the heading and relative sections or Chapter notes without recourse to any interpretative rules. It is only when the goods cannot be classified on this basis, assistance is to be sought from the interpretative rules.

Relevant case laws:

Rajasthan Synthetic Industries Ltd. V. CCE 1989(42) E.L.T 24 (Tribunal) - Rules of interpretation are not invocable if the section and chapter notes clearly determine the classification.

Rule 2(a) – Classification of incomplete or unfinished goods

This rule provides that if any particular heading refers to a finished/complete article, the incomplete/unfinished form or unassembled/dis-assembled form of that article shall also be classified under the same heading provided such goods have the essential characteristics of the finished goods.

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It was held that only goods requiring minor adjustments 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 2(b) – Classification of mixtures/combinations of a material/substance with other materials/substances

This rule relates to mixture or combination of materials or substances, and goods consisting of two or more materials or substances. According to this rule, headings in which there is a reference to a material or substance also apply to that material or substance mixed or combined with other materials or substances. This rule does not apply where specific provisions exist in the headings or the sections or chapter notes.

Examples

- The term coffee will include coffee mixed with chicory.
- Natural rubber will cover a mixture of natural and synthetic rubber.

Rule 3: Classification in case of goods which can be classified under two or more headings

This rule lays down three steps for classifying the goods which are, prima facie, classifiable under several headings. The sequential order of the steps contemplated is

- Most specific description;
- Essential character; and
- Heading which occurs last in numerical order;

This rule applies when goods are prima facie classifiable under 2 or more headings.

In the first step, **{Rule 3(a)}** the general guidelines are that a description by name is more specific than the description by character and a description which identifies the goods clearly and precisely is more specific than the one which is less complete.

Examples

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

It was held that the said product was classifiable under heading No. 85.10 as heading No. 85.10 is more specific as compared to heading No. 85.09.

The second step **{Rule 3 (b)}** relates only to mixtures, composite goods consisting of different materials or components and goods put up in sets. This rule finds applicability if rule 3(a) does not help. In all such cases the goods are to be classified as if they consist of material or components which give them their essential character.

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Example

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.

When goods cannot be classified with reference to Rules 3(a) and 3(b), they are to be classified in terms of **Rule 3(c)** - in the heading which occurs last in numerical order among those which equally merit consideration. This is a fall back provision for resolving the matter when no heading can be regarded as providing a more specific description than the others and when it is not possible to identify the material or component which gives the concerned goods their essential character.

Rule 4 – Akin Rule

When goods cannot be classified in accordance with rules 1,2, & 3, then they are to be classified in a heading of a product which is most akin to the goods in question. Akinship can, of course, depend on many factors such as description, character, purpose etc.

Rule 5:

Classification of cases/containers used for packaging of goods

Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers shall be classified with a specific article or a set of articles when of a kind normally sold therewith.

Conditions to be fulfilled:-

- These cases/containers are specially shaped or fitted to contain a specific article or a set of articles.
- These cases/containers are suitable for long term use and presented with the articles for which they are intended.

This rule does not, however, apply to containers which give the whole of its essential character.

Classification of packing materials and packing containers

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 provision does not apply when such packing material or packing containers are clearly suitable of repetitive use.

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Analysis

This rule lays down that:-

- Cases which are specially designed or fitted to contain a specific article and given with the articles for which they are intended, shall follow the classification of the items which are packed.
- The packing materials and containers cleared along with the goods are classifiable with the goods.

Example: Leather cases, which are normally supplied along with the goods, however costly they may be, need not be treated separately for the purpose of classification.

Exceptions to rule 5

(a) Durable containers capable of repetitive use should be classified separately.

Example: Gas cylinders are meant for repetitive use and therefore cannot be classified along with gas.

(b) When packing material itself gives the essential character as a whole.

Rule 6: Only sub-headings at the same level is comparable

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-heading notes and, making only the necessary changes, 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.

General Explanatory Notes

(a) Relevance of one dash ["-"], two dash ["--"] and three dash ["---"].

- 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.
- Where, however, the description of an article/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 "-".
- 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/group of articles which has "-" or "- -".

This rule proposes that the classification of any product under a sub-heading is to be contemplated after the product concerned has been properly classified under its proper four digit Chapter heading. The classification in the sub-heading of a heading is determined with necessary changes, in accordance with the principles applicable to classification in the four digit headings.