



Haryana State Tax Bar Association
Karnal (HSTBA)

जीएसटी महायज्ञ

GST Olympiad – 2021

(Learn, unLearn, reLearn GST)



Classification & Importance of HSN under GST

Keynote Speaker



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Chief Guest



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Moderator



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Date: August 02, 2021

Time: 06:00 Pm Onwards

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Classification under GST

Overview & Intricacies

Topics to be covered

**Importance of Correct
Classification**



**Other related issues &
Litigation**



**Analysis of key
judgments**



“

You don't pay taxes – they take taxes



Importance of Correct Classification

The term “Classification” is defined as **systematic arrangement in groups or categories** according to established criteria.

Under the given concept, the arrangement of varied items is into **mutually exclusive but related classes**.

Importance of Correct Classification

Essential and integral part of the whole levy and collection mechanism.

It is important both from the **taxpayer's** perspective and **tax collector's** perspective to have a definite class or group under which subject matters of tax can be divided.

Importance of Correct Classification

Leviability of Tax



Goods versus Services



Exemptions



Rate of Tax



Standardization and avoiding differentiation

Importance of Correct Classification

In multiple Tax Rate structure, there is always a certain amount of **arbitrage** created between the tax payer and the tax collector for classification of items.

Example the tussle to classify items between the rates 18% or 28% shall be always on the cards.

Since the Government in India as explained above, is heavily dependent on the tax collections as its source of revenue, they will always be tempted to classify items at the rate bracket of 28% and for tax payer the situation will be vice-versa.

The 10% gap between the rates opens the flood gates for **litigation and divergent interpretations**. In fact tax rate gap of 7% between 5% and 12% rates is also significant.

Classification disputes are not new in the Indian Taxation system

According to an estimate, currently around **12,000** cases are pending before the Supreme Court of India which are pure classification issues under erstwhile Central Excise, Service Tax and VAT regime. Hence India has 70 years of History in the disputes over classification of items under tax legislations.



Hustle!

Definition of 'Goods' and 'Services'

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graph TD; A[Definition of 'Goods' and 'Services'] --> B[Activities listed in Schedule-II]; B --> C[Activities listed in Schedule-III]; C --> D[Identification of Composite Supplies or Mixed Supplies]; D --> E[Identification of HSN Code from the rate notification];
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Activities listed in Schedule-II

Activities listed in Schedule-III

**Identification of Composite Supplies or
Mixed Supplies**

**Identification of HSN Code from the rate
notification**

Definition of 'Goods' and 'Services'

Why it is important ?

Rules differ for fixation of place of supply, time of supply and valuation under GST for Goods and Services.

The terms 'goods' and 'services' have been well defined under Section 2 of the respective laws. According to **Section 2(52) of the CGST Act 2017**, the term goods is defined as under:

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

The term 'services' has been defined under Section 2(102) of the CGST Act 2017 thus:

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Interesting Schedule-II

Drawing power from **Section 7(1)(d) of the CGST Act, 2017**, certain activities have been treated as supply of Goods or Supply of Services under Schedule -II appended to the Acts.

It is interesting that activities in Schedule-II do not classify any article as goods or services. **Rather, it consists of certain activities which can be either treated as supply of goods or supply of services.**

There can be a situation where, an item might neither be goods nor services but its supply is treated as supply of service by virtue of Schedule-II **(Example Transactions in Land and Building).**

Hence Schedule-II should be read in **isolation** since it is qua **activity** but not qua the **item** which is subject matter of tax.

Schedule-II - Classification of activities as Supply of Goods or Supply of Services

Activities in relation to neither goods nor services can be still be treated as supply of services.

(Lease of Immovable Property)



Deemed Supply of 'Goods' or 'Services'
(Schedule 1)



Composite Supply and its treatment



Declared Supplies influenced from erstwhile Service Tax provisions.

Classification of Activities which are neither Supply of Goods nor Supply of Services

In contrast to Schedule-II, drawing power from **Section 7(2)(a)** certain activities have been specified under Schedule-III which are neither treated as supply of goods nor as supply of services.

Hence the given Schedule is also **qua activity** and **not qua item**. Since GST is leviable on **Supply** of Goods or Services, even if any of the items as specified in Schedule-III is either goods or services, by **deeming fiction**, activity undertaken on it under Schedule-III shall constitute as if no supply has taken place at all in terms of the GST Acts.

**Mathuram Agarwal v. State of Madhya Pradesh (1999) 8
SCC 667 (SC)**

- It was held by the Supreme Court of India thus: *"The statute should clearly and unambiguously convey the three components of the tax law i.e. **the subject of the tax, who is liable to pay the tax and the rate at which the tax is to be paid.**"*
- If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law.
- Then it is for the legislature to do the needful in the matter. "

Identification of Composite Supplies or Mixed Supplies

In real world, with changing business dynamics, the supplies are also intermingled and entangled. There may be numerous situations wherein two independent supplies are provided together.

- ☐ Supply of two or more services together (Storage and Transportation)
- ☐ Supply of two or more goods together (Machine with Packing)
- ☐ Supply of goods with supply of services (Wall Painting with Paint)
- ☐ Supply of services with supply of goods (Machine with Installation)
- ☐ Supply of goods with supply of neither goods nor services (Exchange of Currency with Sale of Currency)
- ☐ Supply which constitutes taxable and exempted supplies together (Sale of Bakery item with Vegetables)
- ☐ Supply which constitutes taxable and non-GST supplies together (Sale of Lubricant with Petrol)
- ☐ Supply which is taxable and transactions specified in Schedule-III (Sale of Furniture with sale of Building)

No Tariff Act in GST!

The Central Government, on the recommendations of the GST Council, has issued **Notifications Number 01/2017-CT (Rate) dated 28.06.2017** prescribing the Rate of Tax (Schedules) for specified goods under CGST/IGST ("Rate Notification"). This Notification is divided into **6** Schedules, as follows:

- (i) 2.5% (Schedule I);
- (ii) 6% (Schedule II);
- (iii) 9% (Schedule III);
- (iv) 14% (Schedule IV);
- (v) 1.5% (Schedule V);
- (vi) 0.125% (Schedule VI)

Explanation to the Rate Notification No. 1/2017- Central Tax (Rate)

For the purposes of this Notification:

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(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

HSN

- The Supreme Court held in **CCE vs. Wood Craft Products Ltd. 1995 (77) ELT 23 (SC)**, that blocks boards were classifiable under heading 44.08 under the expression similar laminated wood, observed that HSN can be resorted to in case of ambiguity in classifying goods.
- The use of HSN must be preferred over the ISI terminology. Therefore, the principle is that HSN would apply where the tariff is aligned along HSN, otherwise the entries have to be interpreted on their own strength.

HSN

- A number of advance rulings issued under the GST regime have followed the harmonized system as the basis for classification and such rulings have even been sustained by the appellate authority for advance ruling.
- For illustration, **the Tamil Nadu Appellate Authority in Saro Enterprises** observed that the harmonized system “is a dependable guide for interpreting” the tariff. As another illustration, **the Maharashtra Appellate Authority in Taraltec Solutions (P) Ltd.** sustained the classification undertaken by the authority for advance ruling

HSN

- The **Harmonized Commodity Description and Coding System**, also known as the Harmonized System (HS) of tariff nomenclature is an internationally standardized system of names and numbers to classify traded products.
- It came into effect in **1988** and has since been developed and maintained by the **World Customs Organization (WCO) (formerly the Customs Co-operation Council)**, an independent intergovernmental organization based in Brussels, Belgium, with over 200 member countries.

HSN of Goods

- The HS is organized logically by economic activity or component material. For example, animals and animal products are found in one section of the HS, while machinery and mechanical appliances are found in another. The HS is organized into 21 sections, which are subdivided into 99 chapters. The 99 HS chapters are further subdivided into **1,244 headings and 5224 subheadings. (Chapter 77 is Blank).**
- **Chapters 98 and 99** are reserved for national use. Chapter 98 comprises special classification provisions, and chapter 99 contains temporary modifications pursuant to a parties' national directive or legislation.
- Since its creation, the **HS** has undergone several revisions - ostensibly, to either eliminate headings and subheadings describing commodities that are no longer traded, or to create headings and subheadings that address technological advancements and environmental concerns.
- The current version of the **HS** became effective on 1 January 2017.

Classification of Services as per Notification

- No principles for classification of services have been prescribed under notification for rate or under law for the services. The principles of classification as applicable for Goods cannot be applied on services.
- A clue can be taken from the erstwhile service tax provisions and also from CPC (Central Product Classification) by United Nations Statistical Commission whose list of services is akin to the **Annexure to Notification No 11/2017-CT Rate dated 28.06.2017.**

What is CPC (Central Product Classification)?

In the Preface to the document issued by **Department of Economic and Social Affairs (Statistical Division) of United Nations in 2015** titled **“Central Product Classification-Version 2.1”**, it has been stated thus :

- *“The Central Product Classification (CPC) constitutes a complete product classification covering all goods and services.*
- *It serves as an international standard for assembling and tabulating all kinds of data requiring product detail, including statistics on industrial production, domestic and foreign commodity trade, international trade in services, balance of payments, consumption and price statistics and other data used within the national accounts.*
- *It provides a framework for international comparison and promotes harmonization of various types of statistics related to goods and services”*



Explanatory Notes

Interestingly, The **Central Board for Indirect Tax and Customs** issued **"Explanatory Notes to the Scheme of Classification of Services"** on 12th June 2018 wherein it has been specified that:-

- The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the **United Nations Central Product Classification**.
- The Explanatory notes for the said Scheme of Classification of Services is based on the explanatory notes to the UNCPC.
- The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services.
- These may be used by the assessee and the tax administration as a guiding tool for classification of services.
- The most specific description shall be preferred over a more general description.

Section

SECTION is a grouping of a number of Chapters which codify a particular class of goods. Each Section is related to a broad class of goods, for instance:

Section I : Live Animals

Section IV – Prepared foodstuffs, beverages

Section XII – Footwear, Headgear, Umbrella, Articles of human hair

CHAPTER

CHAPTER and subchapters contain a particular class of goods, for instance the Section on Prepared foodstuffs, beverages covers Chapters like

- Chapter 16: Preparations of meat, fish, etc.
- Chapter 17: Sugar and sugar confectionery
- Chapter 18: Cocoa and cocoa preparation

HEADING

Each chapter is further divided into various HEADINGS and subheadings depending upon the different type of goods covered within the Chapter, for instance Sugar and Sugar confectionery is further divided into headings like

- a) Cane or beet sugar.
- b) Other sugars, molasses (refining of sugar)
- c) Other sugar confectionery

Reading the Tariff

It is important to first narrow down the search for the relevant classification by scaling it down to a particular Section or Chapter.



It is interesting to note that the various commodities grouped under the Sections, Chapters, etc are arranged in increasing order of manufacturing process required on the said commodity – **for instance, the Tariff begins with natural products, raw materials, goes on to semi- finished goods and concludes with fully manufactured goods.**



Reliance is not to be placed solely on the Section or Chapter Titles to classify the product therein.

Reading the Tariff

Once the search has been restricted to a Specific Chapter, each Chapter begins with a set of Notes that are to be interpreted along with various headings in the Chapter.

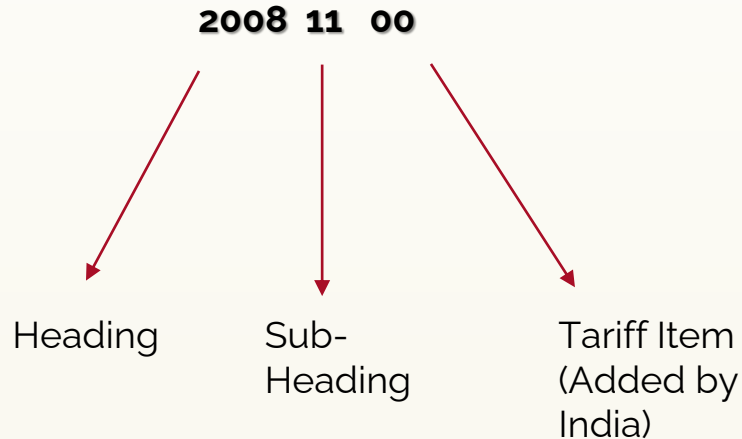


Such Notes may contain definitions of terms used in the Chapter and specific inclusions and exclusions in the Chapter.

The next portion in the Chapter would comprise a table setting out the Tariff Item, description of goods, Unit, and Rate of duty applicable thereon.

Reading the Tariff

The Indian Tariff System employs the **8-digit format**, which is explained below by way of an example



Tariff Item	Description of Goods	Unit	Rate of Duty (Standard)	Rate of Duty (Preferential)
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included			
	- Nuts, groundnuts and other seeds, whether or not mixed together			
2008 11 00	--- Ground-nuts	Kg.	30%	—
2008 19	- Others, including mixtures			
2008 19 10	--- Cashew nut, roasted, salted or roasted and salted	g.	45%	—
2008 19 20	--- Other roasted nuts and seeds	g.	30%	—

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Heading	Sub-heading	Tariff Item	Unit	Rate of duty
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Dashes

The dashes at the beginning of the description of a group of items indicate the following:

Dashes	Meaning
(-) Single	A group of Goods
(--) Double	Sub-Group
(---) Triple	Sub – Sub Classification

The Mumbai CESTAT in case of **Schnectady Herdilla Ltd v CCE (2007) 208 ELT 110** held that for classification under Tariff headings with double (--) entry before them, the goods have to satisfy specifications of single dash (-) preceding them.

Other facets of the Tariff

The Third Column of the Tariff – “Unit” – indicated by abbreviations – these are mandatory for use in Customs documents, except when impractical (e.g. oil in kgs).

The % sign in Column 4 indicates that duty is charged “ad valorem” on the value of goods.

Only sub-headings at the same level (same dashes) are comparable; for instance, in the above example, cashew nuts, roasted and other roasted nuts is comparable, but cashew nuts and ground nuts are not comparable.

Special provisions in Customs Tariff made applicable to GST Rate Schedule for Goods

Though most of goods are classified as per the above system of HSN, special classification is used in certain cases. Like the following

- All goods imported under “project imports-98.01”
- All laboratory chemicals in packs less than 500 gms or 500 ml-98.02
- All baggage of passengers or member of crew-98.03
- Goods for personal use imported by post or air-98.04
- Stores on board of vessel or aircraft-98.05

These goods will be classified in these headings, irrespective of actual classification as per the Customs Tariff.

Sections & Headings

Each Section and Chapter under the Tariff is accompanied by the notes known as "Section Notes" and Chapter Notes.

These are given at the beginning of the Section or Chapter respectively which governs the concerned Section or Chapter as the case may be. In the case of Section Notes, they are applicable to each Chapter which is part of a specific section of the Tariff.

Classification is to be determined only on the basis of description of the heading read with relevant section or Chapter notes.

Since these notes are part of Tariff itself, these have full statutory backing.

Various Tribunals have held that coverage of respective headings has to be determined in the light of the respective section and Chapter note. Hence in this sense, **the section and Chapter note have overriding force over the respective headings and sub-headings.**

Sections & Headings

In **Fenner (India) Ltd v CCE (1995) 97 ELT 8 (SC)**, it was observed that tariff schedule would be determined on terms of headings and any relevant section or Chapter notes.

In **CC. v Sanghavi Swiss Refills P Ltd (1997) 94 ELT 644 (CEGAT)**, it was held that section notes and Chapter notes, being statutory in nature, have precedence over functional test of commercial parlance for the purpose of classification

Chapter/Section Notes in the 'Exemption Notification'

In the case of interpretation of an exemption notification also, the Supreme Court in the case of **Gujarat State Fertilizers Co v CCE (1997) 91 ELT 3 SC** laid down the principle in its judgment that Chapter Notes of Chapter of Tariff referred to in the notification have to be read as part and parcel of exemption notification.

Similar stand taken by the Tribunal in the case of **New Holland Tractors v.s CCE (2010) 253 ELT 249 (CESTAT) & CCE v Bharat Metal Industries (1999) 105 ELT 494 (CESTAT)**

HSN Explanatory Notes

The HSN Explanatory Notes cannot override and dilute the language under the CTA.

However, in case of ambiguity, resort to the HSN is permissible provided there is no conflict with the Headings, Chapter Notes or Tariff Notes.

In **CCE v. Wood Craft Products Ltd. (1995) 77 ELT 23 (SC)**, it was held that as per the Statement of Objects and Reasons of Central Excise Tariff Bill, 1985, the new tariff has been introduced, based on HSN to reduce classification disputes.

Thus, in case of doubt, the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act, unless there is an expressly different intention indicated in the Tariff itself.

HSN Explanatory Notes

The HSN Explanatory notes have also been held to have overriding effect over trade parlance in case of **Health India Laboratories v. CCE (2007) 216 ELT 161 (CESTAT) affirmed in (2008) 22 E.L.T. A133 (S.C.)**

At the same time, in the case of **New India Industries Ltd. v. CC, Bombay (1994) 73 ELT 723** it was held that the HSN Explanatory Notes have persuasive value but do not have any **statutory authority**.

Furthermore, in the case of **Consolidated Coin Co. P. Ltd. v CCE (2013) 287 ELT 221 (CESTAT)**, the Court observed that US Customs Rulings may be considered for classification disputes, since both US and India follow the HSN based classification.

Department to prove classification

CCE vs. Vicco Laboratories (2005) 179 ELT 17 (SC 3 Member Bench).

The burden of proof that a product is **classifiable** under a particular Tariff head is on the **Department** and must be discharged by **proving** that it is so understood by the consumers of products in common parlance.

Rules of Interpretation & Key Judgements

Step-wise approach

In terms of the foregoing, given below is a step-wise approach for classification of goods under GST:

- **Step 1:** Identify the goods that require classification.
- **Step 2:** In the Tariff Schedule, commodities are arranged in increasing order of manufacturing process - Identify the broad Sections and Chapters, the said commodity would fall under
- **Step 3:** By way of application of General Rules of Interpretation, classify the product in terms of the 8-digit-classification
- **Step 4:** Find the relevant sub-heading, as per Step 3. The GST Rate Schedule (along with amending notifications) has specified various rates, grouped under 4-digit or 6- digit-classification. Further, a particular Heading may appear in several Schedules, for example, CTH 2106 [Food preparations not specified elsewhere] —
- **Step 5:** Find the relevant description of heading in GST Rate Schedule and corresponding Rate

General Rules of Interpretation

Rule 1: Classification to be determined per the “Headings”

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.

Classification is to be first tested on the basis of Rule 1. Only if Rule 1 does not resolve the issue, the other Rules are to be looked at sequentially.

General Rules of Interpretation

The Supreme Court in case of **CCE s M/s Simplex Mills Co Ltd (2005) 181 ELT 345 (SC)(3 Member Bench)** held that

Rule-1 gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules.

General Rules of Interpretation

Rule 2(a): Classification of incomplete or un-assembled goods

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 articles 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 un-assembled or dis-assembled.

General Rules of Interpretation

In another case of **LML Ltd. v. CC (1999) 105 ELT 718 (CEGAT) affirmed in 1999 (107) E.L.T. A119 (S.C)]**, it was held that a scooter body unit without engine is classifiable as scooter (CETH 871190).

The Court placed reliance on HSN Explanatory Note for Rule 2(a) which states: "An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle provided it has the essential character of the latter [see Interpretative Rule 2 (a)] as for example:

- (A) A motor vehicle, not yet fitted with the wheels or tires and battery.
- (B) A motor vehicle not equipped with its engine or with its interior fittings.
- (C) A bicycle without saddle and tires. This Chapter also covers parts and accessories which are identifiable as being suitable for use solely or principally with the vehicles included therein, subject to the provisions of the Notes to Section XVII (see the General Explanatory Note to the Section)."

General Rules of Interpretation

Shivaji Works Ltd. v. CCE (1994) 69 ELT 674 (CEGAT),

It was held that the functional test is the correct test for determining the character of a product, i.e. 'primary function' is 'essential characteristic.' Unless the incomplete product is incapable of functioning like the finished goods, this rule is not applicable.

Goods in SKD or CKD condition

In the case of **CCE s. Scan Machineries, (2009) 234 ELT 282 (CESTAT)** the assessee cleared machinery in a phased manner but paid the entire duty at the time of the first clearance of parts, as per trade practice. The clearance was against a single purchase order. It was held that clearance is of a single machine and not as parts of machine.

In the case of **Tata Motors v. CCE (2008) 222 ELT 289 (CESTAT) affirmed in (2016) 337 E.L.T. Agg (S.C.)**, it was observed that the expression "as presented" should be given the same meaning as "as cleared." Thus, if different parts were cleared from different units at different points of time, duty cannot be demanded by treating them as motor vehicle chassis in CKD condition.

But, the same principle may not be applicable for an import entitlement which is specifically meted out to "parts" as held in case of **Union of India v. Tara Chand (1983) 13 ELT 1456 (SC); CC v. Reliance Industries Ltd. (2000) 115 ELT 15**

General Rules of Interpretation

Rule 2(b): Classification of Mixture or Combinations

(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.

While applying the aforesaid rules, some conflict may arise. For example:

- A mixture or combination containing more than one material may be classified under more than one heading by applying rule 2(b). If it contains two items A and B, one classification may be on the basis of "A" and other on the basis of "B".
- There may be two descriptions which may both be possible

General Rules of Interpretation

In the case of **Dhariwal Industries s. CCE (2014) 304 ELT 585 (CESTAT) maintained in (2015) 319 E.L.T. A123 (S.C.)**,

The assessee was manufacturing “Calcutta meetha pan” which was a mixture of various items, primary ingredient being pan leaf. The product contained 70% of dry dates and mixture of spices and sweetener. It was held that classification, as per Rules 2(b) and 3(b), ought to be under “Fruits, Nuts and Other Edible parts” under CETH 20.08 and not as “pan masala.”

General Rules of Interpretation

Rule 3(a): Prefer the Specific entry over the general entry

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 heading search 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.

General Rules of Interpretation

- In case of **Jyoti Industries v. CCE (2000) 115 ELT 559 (CEGAT)**, it was held that Kitchen sink is more appropriately covered under “sanitaryware” (i.e. CTH 7324 [Sanitary ware and parts thereof]) which is a specific description than “household articles of iron and steel” (i.e. CTH 7323 [Household articles of iron and steel]) which is a general description.
- In case of **Dunlop India Ltd v UOI (1983) 13 ELT 1566 (SC)**, it was held that Vinyl Pyridine latex is classifiable as ‘raw rubber’ under Item 39 of the Indian Tariff Act, 1934 and not under Item No. 87 as residuary Item or under Item 82(3) as artificial or synthetic resins. The principle was laid down that “when an article is by all standards classifiable under a specific item in the Tariff Schedule it would be against the very principle of classification to deny it the parentage and consign its residuary item”

General Rules of Interpretation

- In case of Commissioner of **VAT v Taneja Mines (2011) 273 ELT 228 (Delhi)(DB)** it was held that religious picture would mean **pictures used for purpose of religious worship and propagation.**
- The mere fact that the religious pictures are mounted/framed is a matter of irrelevance. Also, the cost of the item is again irrelevant. Frames are nothing more than accessories for safe keeping and do not give any essential characteristics to the goods.
- Hence use of gold in religious pictures which depict divinity is in consonance with the concept of the divine. The use of gold plated nickel foil would add ambience to the pictures and thereby increase its value in the aesthetic sense for a man of religious sentiment and theist views.

General Rules of Interpretation

Rule 3(b): Essential character test for Mixtures or Composite Goods

(b) Mixtures, composite goods consisting of different material is 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.

General Rules of Interpretation

In the case of **CCE v. INARCO. (2015) 318 ELT 604 (SC)**, it was held that floor tiles containing 13.3% PVC (plastic), 84.9% limestone with plastic as binder is to be classified as 'article of stone, cement' as per the test of 'essential character'.

In the case of **Xerox India Ltd. v. CC, Bombay**, citation where the dispute pertained to classification of digital printers, with several functions (fax, copier, etc), reliance was placed on Rule 3(b) to classify the item under CTH 8471 as printer, since printing emerged as the principal function.

In re **Samsung India Electronics P. Ltd. – (2016) 340 ELT 430 (AAR)** it was held that mobile phone with zoom camera is to be classified as a phone, and not as camera, as per its primary function.

In **A V Venkateswaran, Collector of Customs v. Ramchand Subhraj 1983 (13) ELT 1327 (SC)** fountain pens with gold nibs, caps, were held to be classifiable as fountain pens.

However, it is to be noted that the said rule would not apply if the articles have a separate identity. In the case of **CC v. Siyaram Silk Mills (2009) 235 ELT 241 (CESTAT)** where a shirt and tie were sold together, it was held that the set cannot be classified as shirt, and they would be classified as separate items.

General Rules of Interpretation

Rule 3(c): If both are specific – latter the better

(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.

In case of **Mahindra & Mahindra v. CCE – (1999) 109 ELT 739 (CEGAT)**, it was held that if tariff entries 87.03 and 87.04 are **equally applicable**, then goods will be classifiable under 87.04 , as it occurs later in the Tariff.

General Rules of Interpretation

Rule 4: Akin goods Rule 4 states :

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.

In the case of **CCE vs. KWH Helioplastics Ltd. (1998) 97 ELT 385 (SC)**, it was observed that in order to resolve the persisting classification dispute, the relationship of the goods under dispute vis-à-vis the description of the goods under the disputed headings should be ascertained. The relationship with a particular heading depends upon the description, purpose and use of goods. If the relationship is established, goods should be classified where they are akin to the description in the Tariff.

General Rules of Interpretation

Rule 5: Classification of packing containers and packing materials

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 provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.*

General Rules of Interpretation

Rule 6: Goods are comparable at the same level only

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.

General Rules of Interpretation

In the case of **Needle Roller Bearings v. CCE (2000) 124 ELT 577 (CEGAT); Kanwar Sewing Machine, New Delhi v. CC, Bombay (1983) 12 E.L.T. 804 (C.E.G.A.T.)**, it was held that **ball bearings** form part of a machine. Hence, a **part of a ball bearing** is also a part of a machine.

In the case of **Nalanda Manufacturing Co.v. CCE (1998) 102 ELT 289 (Tribunal)**, it was similarly held that part of a refill is also a part of a ball point pen.

Trade/Common Parlance Understanding

Trade / Common Parlance Understanding

It was held in the case of **Muller & Phipps (India) c. CCE (2004) 167 ELT 374 (SC)**, that "Prickly Heat powder" is 'medicament' as per common parlance, though for the purpose of Drugs Act and Sales Tax Act, the product has been treated as a drug.

In the case of **CCE v. Connaught Plaza Restaurant P. Ltd (2012) 286 ELT 321 (SC)**, it was held that, qua "Soft-serve", in the absence of a definition of the term "ice cream", it is to be construed as per common parlance, even if under the provisions of Food Adulteration Act, it may not fall within the meaning of ice cream. What matters is the way the consumer perceives the product.

However, it is to be noted that trade parlance is to be examined only if the tariff entry is ambiguous as held in **Nirlon Synthetic Fibres v. UOI (1999) 110 ELT 445 (Bom) (DB)**

Section/Chapter Notes prevail over Trade Parlance

- The classification under the Customs Tariff is not dependent on trade parlance when the parameters are precisely laid down in the Tariff itself, in the description of the Section Notes, Chapter Notes read with the Interpretative Rules, all of which have statutory force.
- In **CCE vs Wood Polymers Ltd (1998)97 ELT 193 (SC)** it was held that classification should be done as per the rules of interpretation contained in the Tariff and not as per trade parlance and commercial understanding.

However this is so if the rules of interpretation give correct and conclusive answer. Otherwise, one has to look at trade parlance.

Section/Chapter Notes prevail over Trade Parlance

OK Play (India) Ltd v CCE 2005 (2005) 180 ELT 300 (SC)(3 Judges Bench)
laid down the parameters for classification of goods as under:

- No single universal test can be applied for correct classification. There cannot be static parameter for correct classification.
- HSN along with explanatory notes provide a safe guide for interpretation of an entry.
- Equal importance to be given to Rules of Interpretation of Excise Tariff.
- Functional utility, design, shape and predominant usage have also got to be taken into account while determining classification of an item.
- The aforesaid aids and assistance are more important than names used in trade or common parlance in the matter of correct classification.

Technical meaning prevails in certain cases

In the case of **Akbar Badruddin Jiwani v. CC (1990) 47 ELT 161 (SC)**, it was held that if the tariff entry is used in a scientific or technical sense, or when there is conflict between entries in the tariff, common parlance will not prevail.

End Use based/ Functional test Classification

- It has been held in **CCE v. Carrier Aircon Ltd. (2006) 147 STC 421 (SC)**, that end use to which a product is put is not determinative of its classification.
- For example, “axle studs” will be classifiable as “screws” even if these are used on motor vehicles as held in **Kwality Sales Corporation v. CCE (1986) 23 ELT 137 (CEGAT)**.
- However, the exception to this norm is where classification is as per the function of the relevant goods. In such cases, end use is a relevant factor to determine the classification. For example, it was held that plastic pipes and pipe fittings manufactured with the intention of being used as part of irrigation systems should be classified as parts of irrigation system and not as plastic pipes. **[CCE v. EPC Irrigation (2002) 142 ELT 630 affirmed in (2002) 146 E.L.T. A88]**

Other Factors

- Resort to residuary entry
- Dictionary
- Meaning under other Acts or Standards (e.g. ISI/BIS Standards)
- Advertisements/ Product Literature
- Importance of expert opinion and other evidentiary value
- Importance of ISI specification
- Finance Minister's speech (In some case, Finance Minister in the Finance Bill may make certain reference while introducing the changes. Speech of the Finance Minister represents the manner in which the authorities have understood the change. Therefore, the speech of the Finance Minister can be helpful in deciding the classification as held by the Gujarat High Court in the case of **ECHJAY Industries v. UOI (1988) 34 ELT 42 (Guj)**)
- Importance of Trade Notice/Circulars, etc.
- Provision at the relevant time
- Beneficial classification

LITIGATION

States can change the Rates?

- GST COUNCIL IS THERE FOR THIS!
- As per **Article 279A(4)(e)**, The Goods and Services Tax Council shall make recommendations to the Union and the States on:-
-*the rates including floor rates with bands of goods and services tax ;*

Litigation

ITC Conditions in the Rate Notifications?

Registered Brand Name in 'Rate Notification'

To enhance the taxability of brands registered under other acts also, amendment vide **notification no. 27/2017- CT (R) dt. 22nd September, 2017** was introduced. Through this notification, following conditions were prescribed for taxability of goods

I. Put up in unit container and

II. Bearing a registered brand name or

Bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily forgone, subject to the conditions as in the ANNEXURE. **(w.e.f. 22nd September 2017)**

Definition of the Registered Brand Name

Difference between registered brand name and brand name on which an actionable claim or enforceable right in a court of law is available:-

Registered brand name is defined under notification no. 27/2017 – CT (R) as follows: –

- A brand registered as on the 15th May 2017 under Trade Marks Act, 1999, irrespective of whether or not the brand is subsequently deregistered.
- A brand registered as on the 15th May 2017 under Copyright Act, 1957 (14 of 1957)
- A brand registered as on the 15th May 2017 under any law for the time being in force in any other country

Litigation

Possible Delusion!

- Provisions do not state that goods must itself bear or be physically affixed with brand name or trade name. Hence, in some situations, where an affixation may be impossible, such goods shall be considered as branded goods, as long as its environment conveys that it is branded. (There is a difference between Brand Name & Company Name).
- **Important Judgment to understand the IPR Law - SC in Tarai Food Ltd. v. Commissioner & Commissioner of Central Excise, Trichy vs Grasim Industries Ltd [2005 (183) E.L.T. 123 (SC)]**
- Even a use of part of a brand name or trade name could be considered as goods bearing a brand name so long as it indicates a connection in the course of trade between such goods and some person using such brand name.

Litigation

- Classification disputes in customs and excise have taken 20-30 years to be settled by judiciary which are likely to get re-opened under GST in initial stages.
- Some of the outcomes are likely to be based on principles laid down under the current regime but there will be fresh cases given the wider reach of GST and interpretations being taken by various states.
- Litigation may also arise owing to interpretation of composite supplies of goods and services, works contracts.
- How to deal with the notices ?



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