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Goods assessed on RSP basis u/s 4A a 'manufacturing'?

Section 4 of the Central Excise Act, 1944 ("Act") relates to valuation of excisable goods for charging of duty of excise. As the excise duty in most of the instances is on ad-valorem basis, the value aspect becomes important. As per section 4, duty is to be charged on the transaction value.

Section 4A of the Act also pertains to valuation of excisable goods, but it is applicable to certain notified items, where the value for the purpose of charging excise duty is based on Retail Sale Price (RSP). Certain abatement as percentage of RSP is also notified by the Central Government. There is one important aspect of Section 4A of the Act i.e., the Central Government can notify only those goods on which it is required under the Legal Metrological Act, 2009 to declare on the package RSP of such goods. This section thereof makes it mandatory that the goods assessed under section 4A of the Act, must be covered under the Legal Metrological Act.

A new clause (III) was added in section 2(f) of the Central Excise Act, 1944 w.e.f. 1.3.2003. The same is reproduced as under:

2 (f) "manufacture" includes any process, -

[...]

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,

As per this clause, affixing or alteration of RSP on goods would amount to manufacture (in addition to activities of packing/repacking, labelling / relabelling). This definition applies to goods specified in Third Schedule.

Now the goods specified in Third Schedule and the goods specified in notification issued under section 4A of the Act are identical, which implies that the definition of manufacturing as per Section 2(f)(III), *ibid*, would apply to goods which are assessed on RSP basis under Section 4A, *ibid*. Is it really so? Because Section 4A of the Act relates directly to Legal Meteorological Act, 2009. An Item may be notified under section 4A but for reasons it may be exempted, then the applicability of Legal Meteorological Act, 2009 . Once it is turned to be exempted, it goes out of scope of Section 4A of the Act, automatically.

At the time of insertion of clause (III) in Section 2 (f), in Finance Bill, 2003, the letter of Joint Secretary (TRU) D.O.F. NO. J84/1/2003 – TRU dt. 28.2.2003, the salient features of the Bill were mentioned. Para 11.3 (2) of the said letter is reproduced below:

“11.3 Changes in definition of RSP

1) [...]

2) Section 2(f) of the Central Excise Act is being amended to provide that for goods presently covered under the provisions of Section 4A, any process of packing, re-packing, labelling, or re-labelling of goods, putting them into unit containers or any subsequent declaration of RSP on goods or alteration thereof, shall amount to manufacture.

3) [...]"

The above narration of the Ministry of Finance shows the intention of the Government. The intention seems to align the goods in the Third Schedule and the goods notified under Section 4A of the Act. Both must go hand in hand.

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401, Satyam Cineplexes, Ranjit Nagar,
New Delhi - 110008
Phone No. - 011-25895998,
25894899
Email - delhi@bsalaw.in
Website - www.bsalaw.in

C-20/1 (Lower Ground Floor)
Ardee City, Near Gate No. 3,
Sector – 52, Gurgaon - 122001
Phone No. - 0124-4275494, +91-
9910044272
Email - gurgaon@bsalaw.in