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## 1

## CHAPTER 1: INTRODUCTION AND DEFINITIONS

**BACKGROUND OF CUSTOM LAW**

1	As per ancient custom a merchant entering a kingdom with his goods had to make a suitable gift to the king. In the course of time this custom was formalized into custom duty
2	Customs duty is an indirect tax and it is levied on import into India and export out of India, as per entry list No. 83 List I of Indian Constitution

1.1

**CUSTOMS ACT, 1962**

1	Customs law in India is governed by the Customs Act, 1962
2	It came into force with effect from 1.2.1963
3	It extends to the whole of India, including the designated areas in the Continental Shelf and the Exclusive Economic Zone of India notified by the Ministry of External affairs from time to time
4	The Customs Act has 161 Sections distributed over 17 Chapters

**IMPORTANT DEFINITIONS IN CUSTOMS**

<b>Section 2(7)</b>	<b>Costal goods</b>	As per of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from <b>one port in India to another</b> .
<b>Section 2(9)</b>	<b>Conveyance</b>	As per of the Customs Act Defines, 'Conveyance includes a Vessel, an Aircraft and a Vehicle'. The specific terms are vessel (by sea), aircraft (by air) and vehicle (by land).
<b>Section 2(14)</b>	<b>Dutiable Goods</b>	<ul style="list-style-type: none"> <li>Any goods which are chargeable to duty and on which duty has not been paid.</li> <li>Goods continue to be 'dutiable' till they are not cleared from the port.</li> <li>Once goods are assessed at 'Nil' rate of duty, they no more remain 'dutiable goods'.</li> </ul>
<b>Sec 2(22)</b>	<b>Goods</b>	<b>Goods' includes</b> Vessels, Aircrafts, Vehicles, Stores, Baggage, Currency Negotiable instruments and any other kind of movable property.
<b>Section 2(38)</b>	<b>Stores</b>	As per of the Customs Act, stores means goods for use in a vessel or aircraft and includes fuel



		and spare parts and other articles of equipment, whether or not for immediate fitting.
<b>Section 2(3)</b>	<b>Baggage</b>	Baggage (Custom tariff 9803) includes unaccompanied baggage but does not include motor vehicles. (custom tariff 8702) since motor vehicles are subject to higher rate of duty
<b>Section 2(27)</b>	<b>India</b>	India includes the territorial water of India.
	<b>Territorial Waters of India</b>	<ul style="list-style-type: none"> <li>• A portion of sea, which is adjacent to the shores of a country, 12 nautical miles from the base line. (1 nautical mile = 1.853 Kms)</li> <li>• 'Import' is complete as soon as goods enter territorial water. Similarly, export is complete only when goods cross territorial waters.</li> </ul>
	<b>Exclusive economic zone'</b>	<ul style="list-style-type: none"> <li>• Area extends to 200 nautical miles from the base line.</li> <li>• In this zone, the coastal State has exclusive rights to exploit it for economic purposes like constructing artificial islands (for oil exploration, power generation) fishing, mineral resources and scientific research</li> <li>• Beyond 200 nautical miles, the area is 'High Seas', where all countries have equal rights. These high seas are reserved for peaceful purposes.</li> </ul>
<b>Section 2(23)</b>	<b>Import</b>	Bringing into India from a place outside India
<b>Section 2(25)</b>	<b>Imported goods</b>	<ul style="list-style-type: none"> <li>• Any goods brought in India from a place outside India,</li> <li>• And does not include goods which have been cleared for home consumption.</li> </ul>
<b>Sec 2(26)</b>	<b>Importer</b>	Importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer.
<b>Section 2(28)</b>	<b>Indian Custom Water</b>	<ul style="list-style-type: none"> <li>• Indian custom waters means the water extending into the sea up to the limit of contiguous zone of India under Sec 5 of the</li> </ul>

		<p>Territorial waters, Continental shelf, Exclusive economic zone and other Maritime zones Act 1976 and includes any bay, gulf, harbor or tidal river.</p> <ul style="list-style-type: none"> <li>Area beyond 12 nautical miles and up to 24 nautical miles from base line of India'.</li> <li>The C G has got powers to take measures in this area for security of India and immigration,</li> </ul> <p><u>Significance and importance of 'Indian Customs Waters'</u></p> <ul style="list-style-type: none"> <li>Customs officer has power to arrest a person in India or within Indian customs waters.</li> <li>To stop and search any vessel in India or within the Indian Customs waters.</li> </ul> <p>If such vessel does not stop, it can be/confiscated/ fired upon.</p>
Section 2(18)	Export	Taking out of India to a <b>place</b> outside India.
Section 2(19)	Export Goods	<ul style="list-style-type: none"> <li>Any goods, which are to be taken out of India to a place outside India. &amp;</li> </ul> <p>Goods brought near customs area for export purpose.</p>
Sec 2(20)	Exporter	<p>In relation to any goods.</p> <p><b>MEANS</b></p> <p>At any time between their entry for export and the time when they are exported,</p> <p><b>INCLUDES</b></p> <p>Any owner, beneficial owner or any person holding himself out to be the exporter.</p>
Section 2(11)	Custom area	As per of the Customs Act, customs area means the area of a customs station and includes <b>any area</b> in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.
Sec 2(13)	Custom Station	Means any customs port customs airport or land customs station.
Sec 2(12)	Custom Port	Means any port appointed under clause (a) of section 7 [appointed by CBEC] to be a customs port and





		Includes a place appointed under clause [aa] of that section to be an inland container depot.
Sec 2(10)	<b>"Customs airport, International courier terminal, foreign post office".</b>	Means any airport appointed under clause [a] of 7 [appointed by CBEC] to be a customs airport; Includes a place appointed under Clause [aa] of that section to be an air freight station.
Sec 2(29)	<b>Land customs station</b>	Means any place appointed under clause (b) of section 7 [appointed by CBEC] to be a land customs station.
Sec 2(20A)	<b>"Foreign Post Office"</b>	Means any post office appointed under clause (e) of sub-section (1) of Sec. 7 to be a foreign post office.
Sec 2(28A)	<b>"International courier terminal"</b>	Means any place appointed under clause (f) of sub-section (1) of Sec. 7 to be an international courier terminal.
	<b>Inland container depot</b>	a) They are created for the purpose of Loading / Unloading of Export Goods/Imported Goods. b) Movement from ICD to a Land Customs Station or Airport is akin to Trans-shipment from one customs station to another Customs Station.
	<b>Container freight station</b>	They are set up with the main objective of decongesting the Ports, where only a part of the Customs process mainly with examination of goods is carried out by the Customs.
	<b>Air freight station</b>	AFS is an off-airport common user facility equipped with fixed installations of minimum requirements and offering services for handling and temporary storage of import and export cargo.



## 2

## CHAPTER 2: OFFICERS OF CUSTOM

**SEC 3: CLASSES OF OFFICERS OF CUSTOMS**

There shall be the following classes of officers of customs, namely:

- a) Principal Chief Commissioner of Customs
- b) Chief Commissioners of Customs
- c) Principle Commissioners of Customs;
- d) Commissioners of Customs;
- e) Commissioners of Customs (Appeals);
- f) Joint Commissioners of Customs;
- g) Deputy Commissioners of Customs;
- h) Assistant Commissioners of Customs;
- i) Such other class of officers of customs as may be appointed.

**SEC 4: APPOINTMENT OF OFFICERS OF CUSTOMS**

- 1) The Board may appoint such person as it thinks fit to be officers of customs.
- 2) Without prejudice to the provisions of sub-section (1), Board may authorize a Chief Commissioner of Custom or a Joint or Assistant Commissioner of Customs of Deputy Commissioner of Customs to appoint Officers of customs below the rank of Assistant Commissioner of Customs or Deputy Commissioner of Customs.

Proper Officer: Once power has been exercised u/s 4 of Customs Act, only the Proper Officer notified for that area could exercise the powers under the Act, and the Commissioner (Preventive) would have no jurisdiction. Noble Asset Co. Ltd 230 ELT 22 (Bom.)

**SEC 5 : POWERS OF OFFICERS OF CUSTOMS**

- 1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- 2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.
- 3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

2.1

## **SEC 6 : ENTRUSTMENT OF FUNCTIONS OF BOARD & CUSTOMS OFFICERS ON CERTAIN OTHER OFFICERS**

The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.

Among the other classes of officers of customs, the more important ones are:

- a) Appraisers of customs, who do the assessment work of import and export goods, including classification, valuation and examination of the goods; and
- b) Preventive Officers of Customs, who do the executive duties like
  - Boarding and checking ships and aircrafts;
  - Clearing passengers and crew and their baggage;
  - Supervision and control over loading and unloading of cargo;
  - Preventing smuggling by checking suspects, patrolling the customs area, searching suspected premises, persons and vehicles.
  - Interrogating suspects/ witnesses and investigation.
- c) Ministerial officers, who maintain records, keep accounts, etc.
- d) Chemical examiner, who tests samples of imported/ export cargo for determination of true character of the goods for proper classification and value, necessary for determination of customs duty.

The above is the normal setup in the organization at the major ports of Bombay, Calcutta, Madras, Cochin, Vishakhapatnam, Kandla, Goa, known as major custom houses. In other customs ports/ customs airports/ land customs station, the job is carried out by the Central Excise offices, who are having territorial, jurisdictional, with similar designations.

**Apart from the regular customs and central excise formation, it becomes necessary to administer customs laws and regulation in all border areas where there are no customs formations. These places are manned or controlled by other Government officials like:**

1. Border Security Police
2. Indo Tibetan Border Police
3. Coast Guard etc.

Similarly there are areas, where there is not much customs or central excise activity like Andaman and Nicobar Island, Lakshadweep, Mizoram, Manipur, Nagaland, Tripura and other North Eastern States. It has been found convenient to empower local revenue authorities and central and state officials in this regard.

**SECTION - 7 THE BOARD MAY, BY NOTIFICATION IN THE OFFICIAL GAZETTE, APPOINT:**

- (a) The ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods.
- (aa) the places which alone shall be **inland container depots** for the unloading of imported goods and the loading of export goods.
- (b) The places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water.
- (c) The routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier.
- (d) The ports which alone shall be coastal ports for the carrying on the trade in coastal goods or any class of such goods with all or any specified ports in India.
- (e) The post offices which alone shall be foreign post offices for the clearance of imported goods or export goods or any class of such goods.
- (f) The places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods.

**SECTION - 8 THE PRINCIPAL COMMISSIONER AND COMMISSIONER OF CUSTOMS MAY**

- (a) **Approve:** Proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
- (b) **Specify:** The limits of any customs area.

**SECTION - 9 WAREHOUSING STATION**

~~The Board may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed;~~

**SECTION - 10 APPOINTMENT OF BOARDING STATIONS**

The Principal Commissioner or Commissioner of Customs may, by notification in the Official Gazette, appoint, in or near any Customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers.

SECTION 2(16) "ENTRY" IN RELATION TO GOODS

<p>Means an entry made in a</p> <ul style="list-style-type: none"> <li>➤ Bill of entry, [for imported goods]</li> <li>➤ Shipping bill [for export goods by vessels/aircraft] or</li> <li>➤ Bill of export [for export goods by vehicle]</li> </ul>	<p><del>Includes in the case of goods imported or to be exported by post, the entry referred to in section 82 [label or declaration]</del></p>
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SECTION 2(31) PERSON-INCHARGE:

a) In relation to a vessel	b) In relation to an aircraft,	c) In relation to a Railway Train	d) In relation to any other conveyance
Master of the Vessel	The Commander or pilot-in charge of the aircraft	The conductor, guard or other person having the chief direction or the train.	The driver or other person-in-charge of the conveyance

SECTION 2(33) PROHIBITED GOODS:

<p><b>Means</b> any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.</p>	<p><b>But does not include</b> any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.</p>
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**Example:** Obscene materials, Maps and literature where Indian external boundaries have been shown incorrectly, Narcotic Drugs and Psychotropic Substances, Counterfeit goods and goods violating any of the legally enforceable intellectual property right, Chemicals mentioned in birds and animals, Wild animals, their parts and products, Exotic birds except a few specified ones, Beef, tallow, fat/oil of animal origin. Specified Sea-shells, Human skeleton.

**POWER TO PROHIBIT IMPORTATION OR EXPORTATION OF GOODS**

The Central Government may by notification in the Official Gazettee, prohibit either absolutely or subject to such conditions as may be specified, the import or export of goods of any specified description for any of the following purposes:

1. The maintenance of public order and standards of decency or morality;
2. The prevention of smuggling;
3. The prevention of shortage of goods of any description
4. The conservation of foreign exchange and the safeguarding of balance of payments;
5. The prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
6. The prevention of surplus of any agricultural product or the product of fisheries;
7. The maintenance of standards for the classification, grading or marketing of goods in international trade;
8. The establishment of any industry;
9. The prevention of serious injury to domestic production of goods of any description;
10. The protection of human, animal or plant life or health;
11. The conservation of exhaustible natural resources;
12. The protection of patents, trademarks and copyrights;
13. The prevention of deceptive practices;
14. The carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the state to the exclusion, complete or partial, of citizens of India;
15. The fulfillment of obligations under the Charter of the United Nations for the implementation of any treaty, agreement or convention with any country;
16. The compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;
17. The prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign state or is derogatory to national prestige;
18. The prevention of the contravention of any law for the time being in force; and
19. Any other purpose conducive to the interests of the general public.

2.5

Whether goods shall be treated as prohibited goods under the following cases:

Goods	Prohibition
"X" shall not be imported into India	Absolute Prohibition
"Y" shall not be imported into India unless the importer has obtained "Import License". A Ltd. imports "Y" in India after obtaining concerned Import License.	Not Prohibited
"Y" shall not be imported into India unless the importer has obtained "Import License". B Ltd. imports "Y" in India without obtaining concerned Import License.	Prohibited (Pre - importation condition)
"Z" can be imported into India only and only, if it is used for providing free medical services to at least 40% of outdoor patients.	Prohibited (Post - importation condition)





## 3

## CHAPTER 3: CUSTOM TARIFF ACT 1975

**CUSTOM TARIFF ACT**

The Customs Tariff Act, 1975 provides the classification of the goods and rates of duties of customs. It comprises of two schedules :-

- 1) **First Schedule:** In this schedule goods chargeable with import duty are listed. It is also known as 'Import Tariff' which comprises of 98 chapters grouped under 21 sections.
  - (i) **Sections:** A group of Chapters representing a particular class of goods.
  - (ii) **Chapters:** Each section is divided into various chapters and sub-chapters. Each chapter contains goods of one class.
  - (iii) **Chapter notes:** They are mentioned at the beginning of each chapter. These notes are part of the statute and hence have the legal authority in determining the classification of goods.
  - (iv) **Heading:** Each chapter and sub-chapter is further divided into various headings.
  - (v) **Sub-heading:** Each heading is further divided into various sub-heading.
- 2) **Second Schedule:** In this schedule goods chargeable with export duty are listed. It is also known as 'Export Tariff'.
- 3) **Column Headings:** The five column headings as prescribed in schedules to Customs Tariff Act, 1975 are as under :

Column No.	Particulars
1.	Tariff Item
2.	Description of the Goods
3.	Unit
4.	Standard Rate of duty
5.	Preferential Rate of duty

- 4) **Rates of custom Duty:** The basic customs duty are 5%, 7.5% and 10%. Highest rate of basic customs duty is 10% for non-agricultural items, with some exceptions. On baggage, the general rate of duty is 35% and no additional duty of customs is leviable on baggage.

3.1



**5) Social Welfare Surcharge [SWS] on Imports [w.e.f. 02.02.2018]:**

1.	<b>Social Welfare Surcharge [SWS]</b>	A social welfare surcharge has been imposed on imported goods @ 10% of total customs duties [excluding certain duties] w.e.f. 02.02.2018. Hence, effective rate of BCD = 10% general rate of basic customs duty [BCD] + SWS @ 10% BCD = 11%.
2.	<b>No EC &amp; SHEC w.e.f. 02.02.2018.</b>	Education Cess @ 2% and Secondary & Higher Education Cess @ 1% was levied at total 3% on total import duties [excluding certain duties]. Now, no EC and SHEC is leviable on imports from 02.02.2018 and Section 94 of Finance [No. 2] Act, 2004 and Section 239 of Finance Act, 2007 providing for levy of EC/SHEC have been omitted.

3.2

**CLASSIFICATION**

- 1) **Classification:** Classification of goods consists of determining the headings or sub-headings of the Customs Tariff under which the said goods are covered.
- 2) **Need for Classification:**
  - a) **Determination of Rate of Duty:** The rate of duty is determinable on the basis of classification of goods.
  - b) **Determination of Eligibility of Exemption:** The classification of goods is also required to be decided for the purpose of determining eligibility to exemptions, most of which are with reference to the Tariff headings or sub headings.

**HSN**

**The provisions relating to HSN are discussed as under :-**

- 1) **Harmonised Commodity description and Coding System** : Harmonised System of Nomenclature [HSN] is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs and Trade [GATT]. It forms the basis of the system of classification in the Customs Tariff Act, 1975. It has been developed by the Customs Co-operation Council, Brussels.
- 2) **Explanatory Notes to the HSN** :
  - (a) **Official notes issued by the Customs Co-operation Council** : The Explanatory Notes to the HSN are the official notes issued by the Customs Co-operation Council, Brussels.



(b) **Explain and clarify the scope of headings of HSN** : They explain and clarify the scope and extent of each and every heading of the HSN, on the basis of which the present Customs Tariff has been patterned.

(c) **Do not have a legal backing-are only of persuasive value** : It is to be remembered that the Explanatory Notes do not have legal backing, unlike the Chapter Note and Section Notes contained in the Tariff. Consequently, these Explanatory Notes are only of persuasive value and can be used as an aid to classification of goods when there is ambiguity as to the scope of the entry.

(d) **Can be resorted to only in case of ambiguity in tariff items in Customs Tariff** :

- HSN explanatory notes can be resorted to in case of ambiguity in classifying goods.
- When there is no ambiguity about the scope of the entry, the classification has to be done as per the tariff entry itself.

### **BASIC CUSTOMS DUTY**

- Levied under section 12 of Customs Act
- Levied as a percentage of Value as determined under section 14(1).
- Normal rate (peak rate) 10%

### **ADDITIONAL CUSTOMS DUTY (CVD) SEC 3(1)**

- Also Called 'Countervailing Duty' (CVD).
- Duty is equal to excise duty levied on a like product manufactured or produced in India.
- If like article is not produced or manufactured in India, the excise duty that would be leviable on that article had it been produced in India is the base.
- If the product is leviable with different rates, then highest rate among those rates is to be considered.
- If excise duty is not applicable then no CVD payable.
- In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value. Finance Act 2009 (Effective from 19.08.2009)
- In case of any alcoholic liquor imported into India, the Central Government may, specify the rate of additional duty having regard to the



excise duty rates in different states, or, if like alcoholic liquor is not produced or manufactured in any state, then, having regard to excise duty rates in different states.

### **Tutorial Notes:**

**Following Items are out of scope of GST and still subject to Levy of Excise**

3.4

### **Duty and VAT:**

- Alcoholic liquor for human consumption.
- Petroleum crude,
- High speed diesel,
- Natural gas and
- Motor spirit [commonly known as petrol],
- Aviation turbine fuel

Thus ACD u/s 3(1) is levied to countervail the levy of excise duty on such products.

### **Valuation for ACD 3(1):**

For the purpose of calculating under subsections (1) and (3), the additional duty on any imported article, where such duty is leviable at any percentage of its value,

**The value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of –**

- (i) The value of the imported article determined under sub-section(1) of section 14 [Transaction Value] or  
The tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
- (ii) Any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 [BCD], and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customers,

### **But does not include:-**

- a) The duty referred to in sub-Section (1), (3), (5) & (9)
- b) The safeguard duty referred to in sections 8B and 8C;
- c) The countervailing duty referred to in section 9; and
- d) The anti-dumping duty referred to in section 9A.

<b>Proviso</b>	<b>Valuation if excise duty is based on MRP-</b> Provided that in case of an article imported into India	
	<b>a</b>	In relation to which it is required, under the provisions of the 'Legal Metrology Act, 2009' or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and
	<b>b</b>	Where the like article produced or manufactured in India, or in case where like article is not so produced or manufactured, then, the class or description of articles to which the imported article belongs, is
	[1] the goods specified by notification in the official gazette under subsection [1] of section 4A of the Central Excise Act, 1944, the value of the imported article shall be deemed to be the retail sale price declared on the imported article less such amount of abatement, if any, from such retail sale price as the central government may, by notification in the official gazette, allow in respect of such article under subsection [2] of section 4A of that Act.	
<b>Explanation -1</b>	Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.	
<b>Proviso</b>	Provided further that in the case of an article imported into India, where the central government has fixed a tariff value for the like article produced or manufactured in India under sub-section [2] of section 3 of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value	
<b>Explanation -2</b>	Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of the section	


**COUNTERVAILING DUTY U/S 3(5) OF CUSTOMS TARIFF ACT**

- **Purpose:** To counter - balance the Sales Tax, Value Added Tax, Local Tax or any other charges for the time being leviable on a like article on its Sale, Purchase or Transportation in India.
- **Condition:** If the Central Government is satisfied that it is necessary to do so in public interest, and has issued Notification in this regard.
- **Rate:** (Note: ACD under section 3(5) shall **not** exceed 4% of the Value of the Imported Articles)

**Notification No. 53/2017. SAD leviable on following goods @ 4% w-e-f 01/07/2017**

S N	Chapter or heading or sub - heading or tariff item of the first schedule	Description of goods
(1)	(2)	(3)
1	2709 00 00	Petroleum Crude
2	2710	Motor spirit commonly known as petrol
3	2710	High speed diesel (HSD)
4	2710 19 20	Activation Turbine Fuel
5	2711 11 00 2711 21 00	Liquefied natural gas and natural gas

**Valuation for ACD 3(5)**

For the purpose of calculating under sub-section (5), the additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in sub-section (2), or section 14 of the Customs Act, 1962,

Be the aggregate of -

- The value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or

The tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

- Any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and

Any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs,

**But does not include –**

- The duty referred to in sub-section (5), (7) & (9)
- The safeguard duty referred to in sections 8B and 8C;
- The countervailing duty referred to in section 9; and
- The anti-dumping duty referred to in section 9A.

**Mode of calculation of Additional duty of Customs u/s. 3(1) & 3(5)** : The additional duty of customs under section 3(1) and 3(5) of the Custom Tariff Act on any imported article shall be calculated as follows :

	Particulars	Rate %	Amount	Duty
A	Assessable value u/s. 14(1) or Tariff Value u/s. 14(2) of Customs Act [A]		xx	
B	Add: Basic duty of customs u/s. 12 on (A) above and other duties		xx	xx
C	= Value for the purposes of levy of additional duty of customs u/s. 3(1) [C = A + B]		xx	
D	Add : Additional duty of customs u/s. 3(1) = Excise Duty leviable in India computed on [C] above		xx	xx
E	Sub Total		xx	
F	Add SWS on [ B + D+ ] = F		Xx	xx
G	Sub total [ E + F ]		xx	
H	Add: Additional duty of customs u/s. 3(5) computed on [G] above		xx	xx
I	= Total [G +H]		xx	

**INTEGRATED TAX (CVD OF IGST) [SEC 3(7) OF CTA]**

Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40% as is leviable u/s 5 of the IGST Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub section 8A

**Value for levy for Integrated Tax:** Aggregate of -

- The value of the imported article determined u/s 14(1) of the Customs Act, 1962 or the tariff value fixed u/s 14(2), as the case may be; and
- BCD chargeable u/s 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs,





But does not include Integrated Tax referred to in sub-section (7) or GST compensation cess referred to in sub-section (9)

Exemption: goods imported by developer or SEZ or unit in SEZ [N/N 64/2017 - Customs dt 5<sup>th</sup> July, 2017]

**Mode of calculation of Integrated Tax u/s. 3(7) [Section 3(8)]:** The Integrated tax under section 3(7) of the Custom Tariff Act on any imported article shall be calculated as follows :-

	Particulars	Rate %	Amount	Duty
A	Assessable value u/s. 14(1) or Tariff Value u/s. 14(2) of Customs Act [A]		xx	
B	Add: Basic duty of customs u/s. 12 on (A) above and other duties		xx	xx
C	= Total [C = A + B]		xx	
D	Add SWS on B		xx	xx
E	Total [C+D]		xx	
F	IGST on E		xx	xx
G	Total		xx	xx

**VALUE FOR LEVY OF INTEGRATED TAX IN RESPECT OF WAREHOUSED GOODS [SECTION 3(8A)]**

[Inserted by Finance Act, 2018 w.e.f. 29.03.2018] : Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under Section 3(7) shall be, -

- Where the whole of the goods are sold, the value determined under Section 3(8) or the transaction value of such goods, whichever is higher; or
- Where any part of the goods is sold, the proportionate value of such goods as determined under Section 3(8) or the transaction value of such goods, whichever is higher.

**Last transaction value to be taken:** However, where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a)/(b).

**Unsold goods** – Value to be determined as per Section 3(8) : In respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of Section 3(8).

"Transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods. [Explanation].

### **GOODS AND SERVICES TAX COMPENSATION CESS [SEC. 3(9) OF CTA]**

Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10).

**Mode of Calculation of GST Compensation Cess 3(9) [Section 3(10)]** : The GST Compensation Cess under Section 3(9) of the Custom Tariff Act on any imported article shall be calculated as follows :

	Particulars	Rate %	Amount	Duty
A	Assessable value u/s. 14(1) or Tariff Value u/s. 14(2) of Customs Act [A]		xx	
B	Add: Basic duty of customs u/s. 12 on (A) above and other duties		xx	xx
C	= Total [C = A + B]		xx	
D	Add SWS on B		xx	xx
E	Total [C+D]		xx	
F	IGST on E		xx	xx
G	GST Compensation cess on E		xx	xx
H	Total		xx	xx

#### **Illustration 1**

The assessable value of imported goods is Rs. 10,00,000. The basic customs duty is 10%. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 12%. GST Compensation Cess is leviable @ 15%. Social Welfare Surcharge @ 10%. Compute total customs duty and imported cost of the goods, if imports are made on or after 02.02.2018.





**Solution**

**Computation of imported cost and customs duty [amounts in Rs.]**

Particulars		Amount Rs.
Assessable Value	[A]	10,00,000
Add: Basic Customs duty @ 10% of [A]	[B]	1,00,000
Add: Social Welfare Surcharge @ 10% on basic customs duty i.e. 10% of [B]	[C]	10,000
Total value for levy of Integrated Tax u/s. 3(7) of CTA, 1975	[D]	11,10,000
Add: Integrated tax under Section 3(7) @ 12% of [D]	[E]	1,33,200
Add: GST Compensation Cess under Section 3(9) @ 15% of [D]	[F]	1,66,500
<b>Total Cost of Imported Goods</b>		<b>14,09,700</b>
<b>Total Customs duty [B + C + E + F]</b>		<b>4,09,700</b>

**Illustration 2**

The assessable value of imported goods is Rs. 10,00,000. The basic customs duty is 10%. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 12%. GST Compensation Cess : Nil, Social Welfare Surcharge @ 10%. The goods were deposited in custom bonded warehouse. The goods were sold in warehouse at a transaction value of Rs. 15,00,000 before clearance from warehouse. Compute total customs duty.

**Solution**

**Computation of Imported cost and customs duty [amounts in Rs.]**

Particulars		Amount Rs.
Assessable Value	[A]	10,00,000
Add: Basic Customs duty @ 10% of [A]	[B]	1,00,000
Add: Social Welfare Surcharge @ 10% on basic customs duty i.e. 10% of [B]	[C]	10,000
Total value for levy of Integrated Tax u/s. 3(7) of CTA, 1975 [WN]	[D]	15,00,000
Add: Integrated tax under Section 3(7) @ 12% of [D]	[E]	1,80,000
Add: GST Compensation Cess under Section 3(9) @ 15% of [D]	[F]	NIL
<b>Total Customs duty [B + C + E + F]</b>		<b>2,90,000</b>

**VALUE FOR LEVY OF GST COMPENSATION CESS IN RESPECT OF  
WAREHOUSED GOODS [SECTION 3(10A)]**

[Inserted by Finance Act, 2018 w.e.f. 29.03.2018] : Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the goods and services tax compensation cess under Section 3(9) shall be, -

- Where the whole of the goods are sold, the value determined under Section 3(8) or the transaction value of such goods, whichever is higher; or
- Where any part of the goods is sold, the proportionate value of such goods as determined under Section 3(10) or the transaction value of such goods, whichever is higher.

**Last transaction value to be taken:** However, where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a)/(b).

**Unsold goods - Value to be determined as per Section 3(10):** In respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of Section 3(10).

“Transaction value”, in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods. [Explanation].

**SOCIAL WELFARE SURCHARGE [SWS] ON IMPORTED GOODS  
[SECTION 110 OF FINANCE ACT, 2018 2.E.F. 02.02.2018]:**

1	<p><b>Social Welfare Surcharge [SWS] on imported goods [Section 110 of Finance Act, 2018 2.e.f. 02.02.2018]:</b> SWS is a duty of Customs levied for the purpose of Union on the goods specified in the First Schedule to the Customs Tariff Act, 1975, being goods imported into India.</p> <ol style="list-style-type: none"> <li><b>Purpose of levy:</b> SWS is levied to fulfil the commitment of the Government to provide and finance education, health and social security.</li> <li><b>Calculation of SWS:</b> SWS shall be calculated @ 10% on the</li> </ol>
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	<p>aggregate of duties, taxes and cesses which are levied and collected by the Central Government under section 12 of the Customs Act, 1962 and any sum chargeable on the imported goods specified under any other law as an addition to and in the same manner as, a duty of customs, but not including :-</p> <p>(i) The safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act;</p> <p>(ii) The countervailing duty referred to in section 9 of the Customs Tariff Act;</p> <p>(iii) The anti-dumping duty referred to in section 9A of the Customs Tariff Act;</p> <p>c) No SWS on IGST and GST compensation cess : SWS on IGST and GST compensation cess has been made exempt vide Notification No. 11/2018 dated 02.02.2018.</p> <p>d) The Social Welfare Surcharge on imported goods shall be in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.</p>
2.	<p><b><u>Road and Infrastructure Cess on imported goods [Section 111 of Finance Act, 2018 w.e.f. 02.02.2018]:</u></b> Road and Infrastructure cess is levied as duty of customs @ Rs.8 per litre on motor spirit [petrol] and high speed diesel [HSD] imported into India for the purpose of financing infrastructure projects.</p>

### **PREFERENTIAL RATE OF DUTY**

Customs Tariff has 5 columns i.e. Heading No. Sub-Heading No. Description, Standard rate of duty for preferential area.

If the goods are imported from the areas notified by the Central Government to be preferential areas, then the rate of duty under column (5) will be applicable.

The government may by notification under section 25 of the Customs Act prescribe preferential rate of duty in respect of imports from certain preferential areas.

**Conditions to be fulfilled for preferential rate of duty:** The imported will have to fulfil the following conditions to make the imported goods eligible for preferential rate of duty:

- At the time of importation, he should make a specific claim for the preferential rate.
- He should also claim that the goods are produced or manufactured in such preferential area.



- c) The area should be notified under section 4(3) of the Customs Tariff Act to be a preferential area.
- d) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act.

If the importer fails to fulfil these conditions, the goods shall be liable to standard rate of duty.

### **PROTECTIVE DUTIES SEC 6**

If C G is satisfied that immediate action is necessary to protect interests of Indian industry; Rate of duty is as per recommendation of Tariff Commission (Establish under Tariff Commission Act 1951).

- Notification for levy should be introduced in Parliament
- If Parliament not in session, introduced in next session by way of a Bill.
- Notification should Pass in parliament within 6 months,
- If not passed the notification ceases to have force, but action already taken remains valid.
- The protective duty will be valid till the date prescribed in the notification.[Section 7(1)]
- The protective duty can be rescinded, reduced or increased by a notification.[Section 7(2)]
- Such notification should also be placed before Parliament within 7 days of assembly and seek the approval by a resolution moved within a period of 15 days beginning with the day on which notification is so laid before the parliament. [Section 7(3)]

### **SAFEGUARD DUTY SECTION 8 B OF CUTA**

**Circumstances to Impose:** When the goods are being imported in increased quantities and are causing or threatening to cause serious injury to domestic industry. The Central Government may, exempt specified quantity from payment of the whole or part of the safeguard duty.

**Procedure for levy:** CG is empowered to impose 'safeguard duty' on specified imported goods. Such duty is permissible under WTO agreement. Government has to **conduct an enquiry** and then issue a notification. The duty is in addition to any other customs duty being imposed on the goods.

#### **Exceptions:**

1. In case of imports from **developing countries**, such safeguard duty can be imposed only if import of that article from:
  - a. One country > 3%, or
  - b. Aggregate imports from more than one countries > 9%.  
Of the total imports of that article into India.

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2. No safe guard duty in case of 100% EOU / SEZ unit unless specified in notification. Or

The article imported or manufactured from goods imported is removed in DTA. In such case SGD shall be levied on such portion of imported article so removed.

**Provisional Duty:** Central Government can impose provisional safeguard duty, pending final determination **upto 200 days**.

**Max time of levy:** The duty, once imposed, is valid for **4 years**, unless revoked earlier. This can be extended by Central Government but total period cannot be more than **10 years**.

**For the purposes of this section:**

a. “domestic industry” means the producers:

- As a whole of the like article or a directly competitive article in India; or
- Whose collective output of the like article or a directly competitive article in India constitute a major share of the total production of the said article in India;

b. “serious injury” means an injury causing significant overall impairment in the position of a domestic industry;

c. “Threat of serious injury” means a clear and imminent danger of serious injury.

Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

### **Illustration 3**

**Determine the customs duty payable under Customs Tariff Act, 1975 including the safeguard duty of 30% u/s. 8B of the said Act with the following details available on hand :**

Import of Sodium Nitrite from a developing country from 26 <sup>th</sup> February, 2018 to 25 <sup>th</sup> February, 2019 [both days inclusive]	30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic Customs Duty	10%
Integrated tax u/s. 3(7) of Customs Tariff Act, 1975	18%
GST compensation Cess	Nil
Social Welfare Surcharge	10%

**Solution****Computation of customs duty payable thereon [Amount in Rs.]**

Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% [Rs. 30,00,000 × 10%]	3,00,000
Add : Safeguard Duty	9,00,000
Add: Social Welfare Surcharge @ 10% of BCD [No SWS is leviable on safeguard duty]	30,000
<b>Total for IGST</b>	<b>42,30,000</b>
IGST u/s. 3(7) of Customs Tariff Act [Rs. 42,30,000 × 18%]	7,61,400
<b>Total Customs Duty Payable [Rs. 3,00,000 + Rs. 9,00,000 + Rs. 30,000 + Rs. 7,61,400]</b>	<b>19,91,400</b>

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**C V D ON SUBSIDIZED GOODS SEC 9 OF CTA**

Point	Description
<b>1. Conditions for levy</b>	<p>Import of any article into India from any country or territory, which pays directly or indirectly, any <b>subsidy on</b>: (a) manufacture, (b) production, (c) exportation, or (d) transportation of the article.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Import may or may not be directly from the country of manufacture, production, etc.</li> <li>• The imported article may come into India in the same condition in which it left the country of origin, or in some other form.</li> </ul>
<b>2. Power to levy CVD</b>	<p>a. Central Government may impose a Countervailing Duty (CVD), not exceeding the amount of such subsidy, by Notification in Official Gazette.</p> <p>b. <b>Maximum Limit:</b> Rate of CVD shall <b>not</b> exceed the amount of Subsidy.</p> <p>c. Every Notification shall be laid before each House of Parliament.</p> <p>d. CVD shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.</p> <p>e. Central Government is powered to ascertain and determine the amount of subsidy after such inquiry as it may consider necessary.</p>
<b>3. Rules as to subsidy</b>	<p>a. Subsidy should relate to export performance.</p> <p>b. Subsidy should relate to the use of domestic goods</p>





	<p>over imported goods in the export article.</p> <p>c. Subsidy should have been conferred on a <b>limited number</b> of persons engaged in manufacturing, producing or exporting the article, unless such subsidy is for:</p> <ul style="list-style-type: none"> <li>• Research activities conducted by or on behalf of persons engaged in the manufacture, production or export.</li> <li>• Assistance to disadvantaged regions within the territory of the exporting country.</li> <li>• Assistance to promote adaptation of existing facilities to new environmental requirements.</li> </ul>
<b>4. Provisional CVD</b>	<p>a. Central Government may, pending the determination of the amount of subsidy in accordance with Section 9, impose a CVD under section 9(2) not exceeding the amount of subsidy as provisionally estimated by it.</p> <p>b. If Provisional CVD exceeds the Subsidy as determined finally - (i) CVD may be reduced, and (ii) excess CVD collected shall be refunded.</p>
<b>5. Retrospective Levy</b>	<p>a. <u>Retrospective Levy is permissible, if Central Government is of the opinion that:</u></p> <ul style="list-style-type: none"> <li>• Injury caused to the domestic industry, caused by massive imports of subsidized articles in a relatively short period, is difficult to repair, <b>and</b></li> <li>• To preclude recurrence of such injury, it is necessary to levy CVD retrospectively.</li> </ul> <p>b. Retrospective levy shall not extend beyond 90 days from the date of Notification imposing the Provisional CVD.</p>
<b>6. Maximum duration of levy</b>	<p>a. 5 years from date of imposition, but extendable for a further period of 5 years from the date of such extension.</p> <p>b. Extension is possible if Central Government on a review, is of the opinion that cessation of CVD is likely to lead to continuation or recurrence of subsidization and injury.</p> <p>c. Where the review is initiated before the 5 year period, but review is not concluded, the CVD will be in force pending the outcome of the review, for a</p>



further period of maximum 1 year.

### DIAGRAM

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### **ANTI DUMPING DUTY SEC 9 A OF CTA**

It is applicable when

- When large manufacturer from abroad may export goods to India at very low prices compared to prices in his domestic market.
- Such dumping may be with intention to cripple domestic industry or to dispose of their excess stock.
- In order to avoid such dumping, C G can impose, anti-dumping duty up to margin of dumping on such articles.





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MARGIN OF DUMPING

- Margin of dumping' means the difference between normal value and export price
- 'Normal Value' means comparable price in the exporting country
- Margin of dumping is determined on basis of **records concerning normal value and export value maintained and informed by the exporter or Producer**Export Price' means the price at which goods-are exported.
- Dumping duty for WTO countries if central government declares that import of such article in India can cause material injury to local industry.



## QUANTUM OF DUMPING DUTY

- The anti-dumping duty will be equal to dumping margin

### PROCEDURE

- This duty is permissible as per WTO agreement
- Duty can be levied only when there is an Indian industry producing 'like articles'.
- If it is a pending in determination of margin of dumping, duty can be imposed on provisional basis.
- After dumping duty is finally determined, C G can reduce such duty and refund duty extra collected than that finally calculated. Such duty can be imposed up to 90 days prior to date of notification, if there is history of dumping.
- No education cess and SAH education cess on anti- dumping duty.

### EXCEPTION

Anti-dumping duty shall not apply to articles imported by a 100% EOU or a unit in SEZ or SEZ unless specifically made applicable.

**Maximum period of levy:** Such duty, unless revoked earlier, can be imposed for **5 years**. However, if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of **5 years**.

### Circumvention of anti - dumping duty

**Where the Central Government, (on inquiry) is of the opinion that circumvention of anti - dumping duty has taken place, by either of the following ways:**

1. By altering the description or name or composition of the article subject to such anti - dumping duty.
2. By import of such article in an unassembled or disassembled form
3. By changing the country of its origin or export or
4. In any other manner, whereby the anti - dumping duty so imposed is rendered ineffective.

It may extend the anti - dumping duty to such article or an article originating in or exported from such country, as the case may be.

**Explanation:** For the purposes of this section:

- a. **"Margin of dumping"**, in relation to an article, means the difference between its export price and its normal value.
- b. **"Export price"**, means the price of the article exported from the

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exporting country or territory.

- c. **"Normal value"** means the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory.

### Refund of excess duty charge: Section 9AA

Where an importer proves to the satisfaction of the Central Government that he has paid anti - dumping duty imposed under section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti - dumping duty as is in excess of actual margin of dumping so determine, and such importer shall be entitled to refund of such excess duty.

**Case Study: Effective Date of anti - dumping duty:** What will be the dates of commencement of the definitive anti - dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the Rules made thereunder?

- Where no provisional duty is imposed;
- Where provisional duty is imposed;
- Where anti - dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty (Nov. 2006, 6 marks)

### Solution

The date of commencement of anti - dumping duty in the aforesaid cases shall be as under:

Case	Date of commencement	Analysis (Extra Discussion)
1. Where no provisional duty is imposed	Date on which notification levying such duty is published.	<b>For example</b> , if notification levying such duty is published on 15.11.2014, then, duty shall come into effect on 15.11.2014. It shall come into end on 14.11.2019, unless extended. If review is started before 14.11.2019, but is pending, duty may continue upto 14.11.2020.
2. Where provisional duty is imposed	Date on which notification imposing provisional duty	<b>Example:</b> If notification levying such provisional duty is published on 15.11.2014, then, duty shall come into effect on 15.11.2014.

	is issued.	
3. Retrospective imposition	Date specified in notification but upto 90 days prior to date of issue of notification	<b>Example:</b> If notification levying such provisional duty is published on 15.11.2014, then, duty may be imposed retrospectively prior to 15.11.2014 but not earlier than 90 days prior to 15.11.2014 i.e., retrospective duty may be imposed at the earliest w.e.f. 17.8.2014.

### **AUTHORITY TO LEVY ANTI DUMPING DUTY**

- Custom tariff rules 1995 provide detailed procedure for determining the injury in case of dumped article.
- CG will appoint a person as designated authority.
- Appeal can be made against the order.
- The duty so imposed shall unless revoked earlier cease to have effect on the expiry of **5 years** from the date of such imposition.

### **APPEAL TO TRIBUNAL AGAINST ORDER OF ANTI DUMPING AND ANTI SUBSIDY DUTY [SECTION 9C]**

- Appeal can be made to the Custom, Excise and Service tax Appellate Tribunal.
- Such appeal shall accompanied be a fee of Rs 15,000.
- Such appeal should be filed within **90 days** from the date of order under appeal

### **SAFEGUARD DUTY V/S ANTI-DUMPING DUTY**

Basis	Safeguard Duty	Anti-dumping duty
1. Levy under	Section 8B or 8C of the Customs Tariff Act, 1975.	Section 9A of the Customs Tariff Act, 1975.
2. Objective	To ensure that bulk imports of goods do not cause serious injury/disruption to domestic industry.	To ensure that goods are not imported at lower than normal value (dumping), thereby causing loss to domestic market.
3. Based on	Increased imports in QUANTITY.	Imports at value less than normal value.
4. Quantum	Levied as determined by the Government.	Cannot exceed margin of dumping.
5. Duration	Remains in force for 4 years,	Remains in force for 5 years,



	extendable up to 10 years from date of levy.	extendable by further 5 years.
6. Exception	Not levied if imports from a developing country doesn't exceed 3% and total imports from all developing countries (each with share up to 3%) doesn't exceed 9% in total.	Exceptions to levy of this duty are listed in section 9B.

### **SECTION 9B: NO LEVY UNDER SECTION 9 OR 9A IN CERTAIN CASES**

- (1) Notwithstanding anything contained in section 9 or section 9A,
- A. No article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization,
- B. The central government shall not levy any countervailing duty or anti-dumping duty-
- (i) By reasons of **exemption** of such articles from **duties or taxes** or refund of such duties or taxes, or
- (ii) On the import of any article from a WTO country or from a MFN country, unless a determination has been made that import of such article into India causes or threatens injury to any established industry in India or materially retards the establishment of any industry in India,
- C. The Central Government may not levy-
- (i) Any countervailing duty upon receipt of satisfactory voluntary undertaking from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy, or the exporter agreeing to revise the price of the article,
- (ii) Any anti-dumping duty upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price.

### **SECTION 8: EMERGENCY POWER TO IMPOSE OR ENHANCE EXPORT DUTIES**

#### **Central Government empowered to impose/enhance the export duties:**

The central Government may impose or enhance export duties by making amendment to the Second Schedule by issue of a notification in the official Gazette.

#### **Conditions to be satisfied**



- a. The goods may or may not be specified in the Second Schedule.
- b. The Central Government is satisfied that circumstances exist, which render it necessary for the imposition or enhancement of export duties.

If the above conditions are satisfied, the Central Government may impose or enhance export duties.

## PROJECT IMPORTS

Heavy Customs duty on imported machinery for projects make the initial project cost very high and project may become unviable. Hence, concept of 'project Import' has been introduced to bring machinery etc. required for initial setup or substantial expansion concessional customs duty.

The goods are classified under heading 9801, though the machinery and its parts may actually fall under different tariff heading. This simple method is adopted, as otherwise, classifying each machinery and its parts in different heads and valuing them would have been cumbersome and would have delayed clearances, which would cause demurrages.

### Duty payable on project imports-18%

**Spare parts etc. eligible**- Spare parts, raw materials or consumables up to 10% of value of machinery is allowable as part of 'Project Import' at concessional rate; if such spare parts, raw materials or consumable stores are essential for maintenance of the plant or project.

**Projects eligible** - The projects eligible are: (1) Industrial Plant (2) Irrigation Project (3) Power Project (4) Mining Project (5) Project for oil or mineral exploration (6) Other projects as may be specified by Central Government.

**Registration of Contract** - Contract for import has to be registered with Customs. Application for registration of Contract must be made before importation and contract must be registered before order for clearance of goods is made from Customs. The contract can be amended if required.

### CASE STUDY:

**Concession available even if goods destroyed:** Sun Power Ltd. is registered under 'Project Import Regulations, 1986' for import of power equipment's at concessional rate to implement a project for setting up of a power plant. It imported a gas turbine and generator under the Project Import Regulations, 1986, but before these could reach the project site these were lost/destroyed in the sea within India.

The department denied project import concession under the Heading 9801 and demanded full duty, as the goods were not used in the project. Discuss in



the light of decided case law, whether the demand made by the department is tenable in law.

**Solution:** The facts of this case are similar to that in Commissioner v. LancoKondapalli Power Pvt. Ltd. - 2011 (268) E.L.T. A76 (S.C.) wherein it was held that when-

- goods are not used elsewhere in India for any purpose than that of the project, or
- goods are destroyed,

In such conditions, there is no additional liability for differential duty.

Therefore, since the goods were meant for the project and were not used for any purpose other than the project, the concession could not be withdrawn.

The department's demand is, therefore, not tenable in law.

### COMPARATIVE CHART OF DIFFERENT DUTIES

	Additional custom duty	Protective duty	Safeguard duty (any country)	CVD on subsidized goods	Anti-dumping duty
Condition / purpose of levy	<ul style="list-style-type: none"> <li>• ACD equivalent to ED u/s 3(1).</li> <li>• ACD for counter balance ST, VAT etc. u/s 3(5).</li> </ul>	Tariff commission recommendation to protect the interest of any industry established in India	To avoid import of increased quantity and in conditions to cause serious injury to domestic industry	Import from any country which pays directly or indirectly any subsidy on manufacture, production or transportation of any article.	Where an article exported from any country to India at less than its normal value.
Exemption to EOU	Not	Not	No SGD on imports by 100% EOU&	Not	No ADD





/ FTZ / SEZ	specified	specified	unit in FTZ / SEZ	specified	u/s 9A for 100% EOU & unit in FTZ / SEZ
Basis of charge	Statue (Sec. 3)	CG notification	CG notification	CG notification	
Parliament approval	Charged u/s 3, i.e. by the statue directly	Bill to be introduced in same or next session of parliament	Laid before each house of parliament	Laid before each house of parliament	
Provisional levy	Not relevant	Not relevant	Valid for not more than 200 days	Provisional levy is possible time limit not specified	
Retrospective levy	Not relevant	Not relevant	Not possible	Upto 90 days	
Max duration	Not relevant	Not relevant	4 yrs, extendable up to 10 years	5yrs, extendable by 5 yrs at a time	

3.25





**PRACTICAL QUESTIONS**

**Illustration 4**

F.O.B. price of imported goods [Laptop] = Rs. 1,00,000

Cost of transportation = Rs. 20,000

Cost of Insurance = Rs. 5,000

Calculate total customs duty payable if

(a) BCD rate is 10%

(b) Like article subject to GST @ 18%

**Solution**

PARTICULARS		AMT

**Illustration 5**

CIF Price [Mobiles] = Rs. 20,00,000

Cost of Transportation = Rs. 1,50,000

Cost of Insurance = Rs. 80,000

BCD rate = 10% and GST = 12% Calculate Customs Duties.

**Solution**

PARTICULARS		AMT

**Illustration 6**

FOB Price [LED Screen] = Rs.23,50,000

Cost of transportation = Rs. 1,28,000

Cost of Insurance = Rs. 88,000

BCD rate = 18% and GST = 18% Calculate Customs Duties.

**Solution**

PARTICULARS		AMT

3.27

**Illustration 7**

FOB Price of goods [Crude Petrol] = Rs. 18,75,000  
 Cost of transportation = Rs. 1,80,000  
 Cost of Insurance = Rs. 80,000  
 BCD rate = 12%, Excise rate = 20% [Calculate total Customs duty payable]

**Solution**

PARTICULARS		AMT

**Illustration 7**

F.O.B. Price of imported goods [Luxury Car] = Rs. 40,00,000  
 Cost of Transportation = Rs. 2,50,000  
 Cost of Insurance = Rs. 80,000  
 Calculate total customs duty payable if BCD rate is 60%  
 Like article subject to GST @ 28%, GST Compensation Cess @ 15%.

**Solution**

PARTICULARS		AMT



3.28



4

## CHAPTER 4: LEVY, ASSESSMENT, REMISSION AND VALUATION UNDER CUSTOM

### NATURE OF CUSTOMS DUTY AND TAXABLE EVENT

#### 1) Section 12: Dutiable goods

- Duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', on goods imported into, or exported from, India.

Thus Goods become liable to import duty or export duty when there is 'import into, or export from India'.

#### 2) Taxable event for imports

- Import is completed only when goods cross the customs barrier.
- The taxable event is the day of crossing of customs barrier
- The date when goods landed in India or had entered territorial waters is not relevant for taxability
- The taxable event is reached at the time when the goods reach customs barrier and bill of entry for home consumption is filed.

### SECTION 15: VALUATION OF IMPORTED GOODS

SR	IN CASE OF	Rate of duty and tariff value
1	Home consumption	Relevant date shall be the date of filling bill of entry or date of entry inward whichever is later Sec 15 (1)(a)
2	Warehouse goods	Relevant date shall be date on which bill of entry for home consumption is presented (ex-bond bill of entry) Sec 15 (1)(b)
3	For other goods	Date of payment of duty Sec 15(1) ( c )
Provision of section 15 not applicable to baggage and goods imported by post.		

#### 3) Taxable event for exports

- Export commences when goods cross customs barrier,
- Export is completed only when it crosses territorial waters
- Taxable event' occurs only when goods cross territorial waters.
- Therefore export duty rate prevailing as on the date of entry outward granted to the vessel by custom officer is relevant.

4.1

SR	In Case Of	Rate Of Duty And Tariff Value
1	Goods entered for export	Relevant date on which proper officer makes an order permitting clearance Sec 16 (1)(a)
2	For other goods	Date of payment of duty
Provision of section 16 not applicable to baggage and goods imported by post.		

**SECTION 17: ASSESSMENT OF CUSTOMS DUTY**

**Assessment of duty [Section 17] Amended by Finance Act, 2018 w.e.f. 29.03.2018]**

- a) **Self-assessment by Importer or Exporter** : An -
- (i) Importer entering any imported good under section 46 [i.e. Bill of entry is presented by him for clearance of goods], or
  - (ii) Exporter entering any export goods under section 50 [i.e. Shipping bill or Bill of export is presented for clearance of export goods],
- Shall self-assess the duty, if any, leviable on such goods. However, stores can be warehoused without assessment as provided in Section 85.
- b) **Verification and Examination/Testing of goods by Proper Officer** : The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in Section 17(1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
- However, the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.
- The proper office may verify the self-assessment of such good and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
- c) **Calling for information/documents for verification of self assessment** : For the purposes of verification, the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.
- d) **Re-assessment of duty in case of incorrect self assessment** : Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, re-assess the duty leviable on such goods. However, such reassessment, shall be without prejudice to any other action which may be taken under this Act.



**e) Reassessment contrary to self-assessment - Proper officer to pass**

**speaking order within 15 days** : Where any re-assessment done is contrary to the self-assessment done by the importer or exporter ~~regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act~~ and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment. Such speaking order is passed within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

**f) Audit by proper officer at his office or premises of Importer or Exporter** : ~~Where re assessment has not been done or a speaking order has not been passed on re assessment, the proper officer may, audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.~~

~~For carrying out such audit, On site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011 have been framed. According to the said regulations, the proper officer is required to give not less than 15 days advance notice to the importer or exporter to conduct audit.~~

## **SECTION 18: PROVISIONAL ASSESSMENT**

**Notwithstanding anything contained in this act but without prejudice tho the provision of Sec 46 & 50**

**Provisional assessment can be done in following cases**

- When Customs Officer is satisfied that importer or exporter is unable to make self-assessment u/s 17(1) and *makes request in writing*
- It is deemed necessary to carry out chemical or other tests of goods
- When importer/exporter has produced all documents, but Customs Officer still deems it necessary to make further enquiry.
- The importer/exporter has to furnish bond/ guarantee/security for payment of difference if any.
- Goods can be cleared after payment of duty provisionally assessed and after providing the security.
- After final assessment, difference is to be *paid/refunded*.
- In case of goods were warehoused bond to execute for *thrice* the amount of duty provisionally assessed.

**CUSTOM FINALISATION OF PROVISIONAL ASSESSMENT [Regulation, 2018] [N/n 73/2018-Custom [N.T.]**

**Application:** These regulation shall apply to the provisional assessments ordered on and after the enforcement of these regulations.

**Time Limit and manner for submission of documents or information for the purpose of finalization of provisional assessment :**

- 1) All the necessary document required for final assessment to be submitted within 1 month of order of provisional assessment or date of such requisition by proper officer.
- 2) Proper officer shall within 15 days in writing specify the details to be furnished.

3) **Extend :**

a) Proper Officer -	Further upto 3 months
b) Additional Commissioner or Joint Commissioner -	Further upto 3 months
c) Commissioner of Custom -	Extend the time period further as demanded.

- 4) **Time Limit for finalization of provisional assessment :** Within 2 months after receipt of all information or carrying chemical or other test or investigation.
- 5) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of three months.
- 6) If duty payable in final assessment is more than provisional assessment than deficient amount adjusted against security given with bond.
- 7) **Penalty :** If any importer or exporter or his authorized representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to fifty thousand rupees.

**Interest in case of provisional Assessment**

- Recovery of interest from importer/exporter @ 15% p.a.(w.e.f 1/4/16) in cases where finally assessed duty is more than the provisionally assessed duty. **The interest is payable from the first day of the month in which duty was provisionally assessed till the date of payment.**
- Payment of interest to importer/exporter @ 6% p.a. to assessee in cases where finally assessed duty is less than the provisionally assessed duty. The interest is payable if the refund is not sanction within 3 months from the date of final assessment of duty till the date of payment of duty. For refund of duty provisions of doctrine of unjust enrichment will apply.





### Voluntary payment if Interest

- a. Such duty should be paid along with **interest @ 15%** from the first day of the month in which the duty is provisionally assessed till the date of payment thereof;
- b. The term and conditions of the bond and the amount of security of surety furnished at the time of provisional assessment shall remain unchanged; and
- c. No refund of duty will be granted till the assessment is finalized.

4.5

### **SECTION 19: DETERMINATION OF DUTY IN CASE OF IMPORT OF ARTICLES IN SET**

Where articles in set are liable to duty:	Charge of duty on set
1. Based on quantity	On whole quantity, at the applicable rate
2. Based on value (ad valorem basis)	a. On all articles, at the applicable rate. b. On all articles, at the <b>highest applicable rate.</b>
a. Same rate for all articles b. Different rates for different articles	
<b>Exception</b>	If the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

**Note:** In situation 2(b) above, even if some articles are not liable to duty, i.e., assessed at Nil duty, they will be liable to duty at the highest applicable rate.

**Accessories, Spares:** Accessories, Spares, etc. get the classification of the main item /equipment, if:

- a. They are supplied with such main item.
- b. No separate charge is made for such accessories, and
- c. Their price is included in the price of the main item.

### DIAGRAM

If the goods exported out of India are re - imported, then such reimported goods shall be charged to duty as if it is the fresh imports.

In **Tata Tea Ltd. V CC 1999 (114) ELT 775(SC 3 member bench)**, it was held that duty is payable on re - import of machinery which was sent abroad for repairs.

In **Super Cassettes Industries v CCE 2001 (CEGAT)**, it was held that CVD cannot be imposed on re - import if goods are re - imported after repairs and when article retains original identity.

CONCESSIONS IN THIS REGARD

EXEMPTIONS OR CONCESSIONS AVAILABLE IN RESPECT OF RE-IMPORT [N/N 158/95 AND 45/2017 & 60/2018] [AMENDED]		
Case of re-import	Time-limit for re-import	BCD, IGST & GST Cess is exempt and following sum is payable
1. Goods manufactured in India and exporter and re-imported in India for-		Duty is Fully exempt, if -
(i) Repairs or re-conditioning, other than goods specified in Annexure	Within 3 years [10 years in case of Nepal and Bhutan	a) Such goods are re-exported within 6 months from date of re-import [extension upto 6 months allowed by Commissioner or Principal Commissioner]; and
(ii) Reprocessing/refining/re-making or other similar process	Within 1 year	b) Assistant Commissioner is satisfied about identify of such goods.
2. Goods re-imported without being subjected to re-manufacturing or reprocessing through melting recycling or recasting abroad.	Within 3 years from date of export +2 years extension	
(A)If exporter under following benefit -		
(a) Claiming drawback/refund of customs or central excise or state excise or IGST.		Amount of drawback/refund of customs or central/ state excise duty or IGST
(b) Under bond without		Amounts of IGST not paid

payment of IGST		
(c) Under duty exemption scheme [DEEC/Advance Authorization/Dfia] or Export Promotion Capital Goods Scheme [EPCG]	[Only for (c) : in 1 years from export + 1 years extension]	Amount of IGST and GST compensation cess leviable at time and place of import.
(B) Re-import of any other Goods [not falling under 2(a) to 2(c) exported for repairs abroad and there has been no change in ownership of the goods between the time of export of such goods and re-import thereof.		Value [for levy of duty] = Fair cost of repairs + Cost of materials used in repairs [such cost includible even if not actually incurred] + insurance and freight [to and fro]
(C) Re-import of any other exported goods		Nil
3. Goods as specified in Annexure, manufactured in India and re-imported into India for repairs or for reconditioning.  Newly Inserted by F.A. 2018	Within 7 years [10 years in case of Nepal and Bhutan.	Duty is Fully exempt if- a) Goods are re-exported within 1 yr. or the date re-importation. b) Assistant/Deputy Commissioner of Custom is satisfied as regard identity of the goods. c) Failure to comply with conditions amount = duty levied at the time of re-import - duty leviable on such goods at time of importation.

#### Illustration 4

**Re-import after repairs** : Mr. X of Delhi imported a machinery on 1-1-2018 [value Rs.10 lakh and duty Rs. 1,10,000] from Mr. Y of US. Later, he found that machinery was defective and therefore, he sent back that machinery for repairs, etc. abroad. The cost of insurance and freight from Delhi to US is Rs. 55,000. Repair work was carried out on machinery by Mr. Y and materials worth Rs. 77,500 and labour, etc. worth Rs. 14,500 was borne by Mr. Y. The cost of insurance and freight for repaired goods from US to Delhi is Rs. 60,000. Determine the duty payable at the time of re-import on 1-1-2019, if rate of duty

**Solution**

In view of Section 20, re-import is also liable to duty. However, as per concession granted in this behalf, in case of re-import after repairs abroad, the duty payable would be that on value comprising of 'fair cost of repairs [even if not borne by importer] plus Insurance / freight [both ways]. Hence, duty would be -

Value = Rs.55,000 + Rs.77,500 + Rs.14,500 + Rs. 60,000 = Rs. 207,000;

Duty = Rs. 2,07,000 x 11% = Rs. 22,770.

**SECTION 21: GOODS DIRELICT, WRECK, ETC, - LIABLE TO DUTY**

This section applies to all goods, -

- Derelict, (i.e., broken down)
- Jetsam, (i.e., goods thrown overboard a ship)
- Flotsam (i.e., floating wreckage of a ship) and
- Wreck (i.e., broken forcefully)

Which is -

- Brought or
- Coming into India. Such goods shall be -
- Dealt with as if they were imported into India, (i.e., liable to duty as if they were imported into India even if they are not actually imported by any person unless it be shown to the satisfaction of the proper office that they are entitled to be admitted duty-free under this Act.

Distinguish between derelict, jetsam and flotsam

Derelict	Jetsam	Flotsam
Goods abandoned by the owner of goods without any hop of recovering it.	Owner of goods has no intention to abandon.	Owner of goods has no intention to abandon.
Goods are not thrown from the vessel to prevent it from sinking.	Goods are thrown with speed from the vessel to prevent it from sinking.	Goods are thrown with speed from the vessel to prevent it from sinking.
Derelict gets sunk and does not drift to the shore.	Jetsam gets sunk and drifts to the shore.	Flotsam does not sink but it floats and drifts to the shore.

**REMISSION OF DUTY****SECTION 13: DUTY ON PILFERED GOODS**

If any imported goods are **pilfered**.

- a. **After unloading** thereof, and
- b. **Before** the proper officer has made an order for:
  - Clearance for home consumption, or
  - Deposit in a warehouse

The **importer shall not be liable to pay the duty** leviable on such goods except where such goods are restored to the importer after pilferage.

- a. It has been held that remission of duty has to be allowed if goods were lost or destroyed for any reason **at any time before clearance**
- b. Similarly, there is no remedy if goods are pilfered **after the order for clearance is made but before the goods are actually cleared**

**Meaning of term 'pilfer'**: The term '**pilfer**' means "to steal, especially in small quantities, petty theft." Therefore, the term does not include loss of total package.

**Circumstances in which pilferage can be claimed**: In order to claim pilferage the following circumstances should exist:

- a. There should be **evidence of tampering** with the packages;
- b. There should be **blank space** for the missing articles in the packages; and
- c. The missing articles should be **unit articles** (and not part articles)

**Pilferage noticed at the time of removal of goods by the importer**:

Sometimes the pilferage may be observed only at the time of removal of goods by the importer. In such case, the importer has to ask for survey either by the steamer agents or by the insurance surveyors and the report issued by them would form the basis for claiming remission. **However, as the duty would already have been paid, the remission is allowed in the form of a refund.**

**Following points merit consideration**

1. If goods are pilfered after the order of clearance is made but before the goods are actually cleared, no remission would be allowed.
2. Section 13 deals with only pilferage. It does not deal with loss / destruction of goods.
3. Provisions of section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.

4.9



4. If the goods are pilfered after they are unloaded but before they are cleared from the port, the customs duty is payable by port trust or airport authorities under whose custody the goods were lying (Section 45).

However, Section 13 and section 45 are independent provisions. In other words, whether duty is paid / payable by the custodian or not, remission cannot be denied to the importer by the Department.

### DIAGRAM

## **SECTION 22: ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS**

*Where it is shown to the satisfaction of AC or DC of Customs that any imported goods had been damaged or had deteriorated at any time:*

1. Before or during the unloading of the goods; or
2. After unloading but before clearance for home consumption, on account of any accident not due to any willful act, negligence or default of the owner, his employee or agent,

Then duty shall be chargeable only on the value of the damaged or deteriorated goods.

*The value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:*

- a. By the proper officer, or

b. Such goods may be sold by public auction or by tender, and the gross sale proceeds shall be deemed to be the value of such goods.

**Meaning of damage:** The term 'damage' denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant.

**Meaning of deterioration:** Deterioration is reduction in quality of goods due to natural causes.

**Duty liability in case of abatement :** The goods shall be chargeable to duty determined in the following manner -

Duty leviable on such damaged or deteriorated goods =	$\frac{\text{Duty chargeable on the goods before the damage or deterioration}}{\text{Value of the goods before damage or deterioration}} \times$	Value of the damaged or deteriorated goods
Abatement of duty on damaged or deteriorated goods =	Duty leviable on the goods before damage -	Duty leviable on the goods after damage.

**DIAGRAM**

4.11



The AC or DC shall remit the duty on goods, where it is shown to their satisfaction that any imported goods have been:

1. Lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, or
2. The owner of imported goods relinquishes his title to the goods before an order for clearance for home consumption or for deposit in a warehouse has been made.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favor of the commissioner of customs along with the invoice.

No remission is available u/s 23 in case of theft of goods belonging to importer theft does not does fall within the purview of the expressions "lost" or "destroyed".

**Analysis**

1. An analysis of section 23 shows that it comes into play after the duty has been paid and even after an order for home consumption has been passed, but before the goods are actually cleared, and then it is found that they have been lost / destroyed. In that case the provision is not that goods will not be liable to duty, but duty paid on such goods shall be remitted by the AC / DC of Customs.
2. In respect of the goods which have been pilfered after they have been unloaded but before the goods are cleared for home consumption or deposit in a warehouse, section 13 would apply and the importer would not be liable to pay the duty. In cases where section 23 is attracted, the importer is entitled to remission of duty.
3. The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc.
4. The loss referred to in sub - section (1) may be at the warehouse also.
5. In the above situation, the loss / destruction have to be proved to the satisfaction of the AC or DC. Thereupon, he may pass remission orders cancelling the payment of duty. In case duty has already been paid, refund can be obtained after getting the remission orders.


**PILFERED GOODS V/S LOST OR DESTROYED GOODS**

Pilfered goods under section 13	Lost or destroyed goods under section 23
Pilferage refers to that in small quantities.	Lost or destroyed postulates loss or destroyed by whatever reason whether theft, fire accident etc.
In this case the importer is not liable to pay duty leviable on such goods.	The duty payable on lost goods is remitted by Assistant / Deputy Commissioner.
In this case, if the pilfered goods are retrieved duty becomes payable.	In this case, restoration is impossible if the goods are destroyed.
The pilferage must have occurred after the unloading of the goods but before the proper officer has made an order for clearance for home consumption or deposit on a warehouse.	In this case the goods must have been lost or destroyed at any time before their clearance for home consumption. Thus, it also covers the cases where the goods are lost after the duty has been paid and order for clearance has been given but before the goods are actually cleared.
These provisions do not apply to warehoused goods.	It is applicable to warehoused goods also.
The importer does not have to prove pilferage as it is obvious at the time of examination by the proper officer.	In this case the burden is cast on the importer to satisfy the Assistant / Deputy Commissioner that the imported goods have been lost or destroyed at any time before the physical clearance of the goods for home consumption.

**DIAGRAM**



4.14

**SECTION 24: POWER TO MAKE RULES FOR DENATURING OR MUTILATION OF GOODS**

The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilization, then denaturing or mutilation of such goods is useful. By denaturing, goods are made unfit for other purposes. *After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.*

Denaturing or spirit rules, 1972 specify procedure for denaturing spirit.

**Example:**

Ethyl Alcohol which is not denatured attracts a higher rate of customs duty whereas denatured ethyl attracts lower rate of duty. Assuming undenatured ethyl alcohol is imported, certain very bitter chemicals can be added to denature the spirits as per Rules and once they are denatured, they attract the lower rate of duty.

**VALUATION FOR CUSTOM DUTY****TARIFF VALUE SEC 14 (2)**

- Tariff Value can be fixed by CBE&C (Board)
- Government should consider trend of value of such or like goods
- Once Tariff Value fixed, duty is payable as percentage of this value.
- The percentage applicable is as per Customs Tariff Act
- Example for tariff value fixed were crude palm oil; Palmolein and palm oil

**TRANSACTION VALUE AS PER SECTION 14 (1)**

The value of the imported goods and export goods shall be the transaction value of such goods, as determined in accordance with the rules made in this behalf:

Transaction Value in the case of imported goods shall be,

- The price actually paid or payable for the goods when sold for
- Export to India for delivery at the time and place of importation [for imported goods], or
- Export from India for delivery at the time and place of exportation [for exported goods],
- Where the buyer and seller of the goods are not related and
- Price is the sole consideration for the sale
- Subject to such other conditions as may be specified in the rules made in this behalf.

The price actually or payable for the goods	XXXXX
<b>Add:</b> Any amount that the buyer is liable to pay for costs and services, including -	
1. Commissions and brokerage	XXX
2. Assists	XXX
3. Engineering and design work	XXX
4. Royalties and license fees	XXX
5. Costs of transportation to the place of importation	XXX
6. Insurance, and	XXX
7. Handling charges	XXX

**Exchange Rate: [Determined by CBIC]**

- **Import price:** as in force on the date of filling bill of entry u/s 46
- **Export price:** as in force on the date of filling a shipping bill or bill of export u/s 50.

4.15

- Time of importation means price ruling when the goods were imported is relevant.
- Price prevalent on date of contract not relevant.
- All expenses up to destination port including freight, transit insurance, unloading and handling charges are to be included.

4.16

DIAGRAM

**Price must be the sole consideration**

- Price should be sole consideration for sale.
- If there is other consideration, it should be added to the transaction value.

**VALUATION RULES IF TRANSACTION VALUE IS NOT DETERMINABLE**

*Valuation is done as per valuation rules.*

4.17

**CUSTOM VALUATION RULES**

The custom valuation rules, 2007 based on WTO valuation agreement consist of rules for providing methods of valuation

Rule	Methods
3(1)	Transaction value of imported goods [section 14(1)]
4	Transaction value of Identical goods
5	Transaction value of similar goods
7	Deductive value of imported goods
8	Computed Value
9	Residual method

**RULE 3(1): TRANSACTION VALUE**

1	The value of the imported goods shall be the transaction value adjusted in accordance with the provisions of rule 10. According to rule 2(g), transaction value means the value referred to in section 14(1) of the act according to section 14(1) transactions value means the price actually paid or payable for goods when sold for export to India, for delivery at their time and place of importation to where the buyer and seller of goods are not related and price is the sole consideration to the sale.				
2	Condition subject to which transaction value acceptable According to rule 3(2) the transaction value of imported goods, shall be excepted value of such goods subject to fulfillment of the following condition- <table border="1"> <tr> <td>a</td><td>No restrictions as to disposition or use of goods, there are no restrictions as to the disposition, or use of the goods by the buyer, other than restrictions which-               <ul style="list-style-type: none"> <li>i) Are imposed or required by law or by the public authorities in India, or</li> <li>ii) Limit the geographical area in which the goods may be resold, or</li> <li>iii) Do not substantially affect the value of the goods</li> </ul> </td></tr> <tr> <td>b</td><td>Sale or price not subject to condition consideration - the sale or price is not subject to some condition or consideration for which the</td></tr> </table>	a	No restrictions as to disposition or use of goods, there are no restrictions as to the disposition, or use of the goods by the buyer, other than restrictions which- <ul style="list-style-type: none"> <li>i) Are imposed or required by law or by the public authorities in India, or</li> <li>ii) Limit the geographical area in which the goods may be resold, or</li> <li>iii) Do not substantially affect the value of the goods</li> </ul>	b	Sale or price not subject to condition consideration - the sale or price is not subject to some condition or consideration for which the
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b	Sale or price not subject to condition consideration - the sale or price is not subject to some condition or consideration for which the				

		value cannot be determined in respect of the goods being valued;
	c	Proceeds of subsequent resale no part of the proceeds of any subsequent resale disposal or use of the goods by the buyer will accrue directly or indirectly to the seller unless an appropriate adjustment can be made in accordance with the provisions of rule 10; and
	d	Related person to the buyer and seller are not related or where the buyer and seller are related that transaction value is acceptable for customs purpose under the provisions is rule 3(3).
<b>Note</b>	In case transaction value cannot be determined if the above conditions are not fulfilled. The value shall be determined proceeding sequentially as per rule 4 to rule 9.	

The value of imported goods shall be -

The Transaction Value	XXX
<b>Add:</b> The following cost and services under rule 10 to the extent they are not included in the price actually paid or payable [Rule 10(1)]	
<b>(a) The following if incurred by the buyer, namely: -</b> <ul style="list-style-type: none"> <li>(i) Commissions and brokerage, except buying commissions;</li> <li>(ii) The cost of containers which are treated as being one for customs purposes with the goods in question;</li> <li>(iii) The cost of packing whether for labour or materials;</li> </ul>	XXX
<b>(b) The Value</b> <ul style="list-style-type: none"> <li>(i) Apportioned as appropriate, of the following goods and services</li> <li>(ii) Where supplied by the buyer</li> <li>(iii) Free of charge or at reduced cost</li> <li>(iv) For use in connection with the production and sale of imported goods, namely</li> <li>(v) Materials, components, parts incorporated in the imported goods;</li> <li>(vi) Tools, dies, moulds used in the production of Imported goods;</li> <li>(vii) Materials consumed in the production of the imported goods;</li> <li>(viii) Engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;</li> </ul>	XXX
<b>(c)</b> Royalties and licence fees related to the imported goods that the buyer is required to pay as a condition of sale of the goods being valued.	XXX



(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;	XXX
(e) All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller.	XXX
FOB	XXXXX
<b>Add:</b> Rule 10(2) Adjustments	
1. Cost of freight	XXX
2. Cost of insurance	XXX
Transaction value	XXXXX

4.19

<b>Proviso 1</b>	Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on board value of the goods.				
<b>Proviso 2</b>	Provided further that when the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be 20% of such sum.				
<b>Proviso 3</b>	Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods.				
<b>Proviso 4</b>	Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum.				
<b>Proviso 5</b>	<p>vided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed 20% of free on board value of the goods.</p> <p>Calculation of freight or insurance if FOB is cum insurance or freight.</p> <table border="1"> <thead> <tr> <th>Case</th><th>Treatment</th></tr> </thead> <tbody> <tr> <td>a) Sum of "FOB" value of goods and Cost of insurance under Rule 10(2)(b)" is ascertainable.</td><td>Cost of transport/handling under Rule 10(2)(a) = 20% of [FOB + Insurance Cost of Rule 10(2)(b)] <b>Example:</b> FOB and insurance is \$ 10,000. Hence, cost of transport = 20% of 10,000 = \$ 2,000.</td></tr> </tbody> </table>	Case	Treatment	a) Sum of "FOB" value of goods and Cost of insurance under Rule 10(2)(b)" is ascertainable.	Cost of transport/handling under Rule 10(2)(a) = 20% of [FOB + Insurance Cost of Rule 10(2)(b)] <b>Example:</b> FOB and insurance is \$ 10,000. Hence, cost of transport = 20% of 10,000 = \$ 2,000.
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<b>Proviso 6</b>	Provided also that in the case of goods imported by sea or air and transhipped to another customs station in India, The cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.				



**KEY NOTE**

\*In case of goods imported by sea for clearance at an Inland Container Depot or Container Freight Station, the cost of freight from the port of entry to the ICD or CFS shall not be included.

**Explanation:** The cost of transport includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

**EXCLUSIONS FROM CUSTOMS VALUATION**

- Cost of durable and re-usable containers, if importer agrees to execute a bond to re-export the containers within six months.
- Charges for construction, erection, maintenance, installation etc., after importation of machinery, equipment
- Transport insurance after import (transport from port/airport to factory)
- Local taxes in India
- Demurrage charges for later clearance of goods.
- Bank charges paid to banker for services rendered by them

The value of the imported goods is the transaction value as per sec 14 adjusted with the cost and services as per rule 10

**The transaction value will be accepted under the following conditions**

- There are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -
  - i. Are imposed or required by law or by the public authorities in India; or
  - ii. Limit the geographical area in which the goods may be resold; or
  - iii. Do not substantially affect the value of the goods;
- The sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued.
- The buyer and seller are not related,

**RULE 12: REJECTION OF DECLARED VALUE.**

- When the proper officer *has reason to doubt* the truth or accuracy of the value declared for imported goods, he may ask the exporter to furnish information, documents or other evidence,
- After receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value, it is deemed that transaction value not determined properly.
- At the request of an exporter, the proper officer should inform in writing and should give reasonable opportunity to importer, before taking final decision.

## **EXPLANATION TO RULE 12**

- This rule by itself does not provide a method for determination of value.
- This rule provide mechanism and procedure for rejection of declared value in the case of doubt on truth and accuracy
- Where the value transaction value rejected under this rule, value will be determined sequentially following Rule 4 to 9
- Declared value shall be accepted where the proper officer is satisfied about the truth or accuracy after the said enquiry in consultation with the importer.

### **Reasons where Proper officer will get doubt about truth and accuracy**

- The significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- The sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- The sale involves special discounts limited to exclusive agents;
- The Misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- The non-declaration of parameters such as brand, grade, specifications that have relevance to value;
- The fraudulent or manipulated documents.

## **RULE 4: TRANSACTION VALUE OF IDENTICAL GOODS**

If transaction value of same goods not available because of

- Abnormal discount, unconditional sale,
- Sale not in competitive conditions,
- No sale because lease, hire, gift and sample
- In such cases transaction value of identical goods will be considered

### **Meaning of identical goods**

*Goods should be the same in all respects, including physical characteristics, quality and reputation; except for minor differences in appearance*

When applying the value of identical goods the following should be considered

- Goods have been produced in the *same country*
- They should be produced by *same manufacturer*, if same manufacturer not available price of goods produced by *another manufacturer in the same country*. However brand reputation and quality of other manufacturer should be comparable.
- Imported at or around about *same time*
- *Adjustment* for distances and transport costs if any required to be considered
- *Costs and services as per rule 10 are required to add.*

4.21

**Illustration 1**

A consignment of 800 metric tons of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric ton was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin:

S N	Quantity imported in metric tons	Unit price in US \$ C.I.F.
1	20	260
2	100	220
3	500	200
4	900	175
5	400	180
6	780	160

The rate of exchange on the relevant date was 1 US \$ = Rs.43.00 and the rate of basic customs duty was 10% ad valorem. There is no countervailing duty or special additional duty of customs.

Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required

**Solution**

The following points are relevant:

- No transaction value:** A nominal price of US \$ 10 per MT has been charged and, that too, to cover freight and insurance charges. Hence, there is no transaction value of the imported goods gifted.
- Rule 4 applies:** Since Rule 3 is rendered inapplicable, hence, value is to be determined proceeding sequentially from Rule 4 to Rule 9 of the Valuation Rules. Since data as regards edible oil of Malaysian Origin in the case of contemporaneous imports is available, hence, Rule 4 relating to transaction value of identical goods can be applied.
- Same commercial level and same quantity:** The sales at 20 MT, 500 MT and 400 MT cannot be regarded as sales at same commercial level and in substantially same quantity. However, sales at 780 MT (Price \$ 160) and 900 MT (Price \$ 175) are at same commercial level and same quantity.

4) **More than one value found - lowest to be taken:** Since more than one value has been found, hence, \$ 160 or \$ 175, whichever is lower shall be taken i.e. \$ 160.

	Duty		Total
CIF Value (\$ 160 per MT x 800 MT x Rs.43 per \$)			55,04,000.00
<b>Add:</b> BCD	10.00%	5,50,400	5,50,400
		5,50,400	60,54,400.00
ADD: SWS @10% on BCD		55,040	55,040
Total (other duties are exempt) (rounded off)			61,09,440

### **RULE 5: TRANSACTION VALUE OF SIMILAR GOODS**

- If Transaction value of identical goods cannot be used, valuation is to be done based on Transaction value of similar goods
- Similar goods are same as with identical goods additional requirement is that performing same function and commercially inter-changeable
- When applying the value of similar goods consideration should be governed will be the same as identical goods value adopted under provisional assessment cannot be considered for valuing under rule 4 and rule 5.

### **Difference between Identical and Similar Goods**

Identical goods	Similar Goods
Goods must be same in all respects, except for minor difference in appearance	Goods have like characteristics and components and perform same functions
Example: Hero Honda two wheeler products namely Splendor and Passion	Example: hero Honda Splendor and Bajaj scooter

### **RULE 6:**

When Value cannot be determined under Rule 3, 4 and 5, the value can be determined under deductive value method (rule 7) or computed value method (rule 8)

### **RULE 7: DEDUCTIVE VALUE METHOD**

- If Transaction Value of identical & similar goods is not available then deductive value method is used.
- When same, identical or similar imported goods are sold in India and price in India is available and the sale should be in the same condition as they are imported.

- Assessable Value is calculated by reducing post-importation costs and expenses from this selling price.

**Deductions**

- Selling Expenses (commission etc.)and selling profits
- Direct and indirect cost of marketing the goods in India.
- Transport, insurance and associated costs within India
- Customs duties, sales tax and other taxes levied in India.
- If price of identical goods or similar goods in India is not available, but price in India is available after the imported goods are processed then such price can be considered after deducting processing costs.
- The price will be Unit price sold in greatest numbers of quantity to be considered for valuation

If the imported goods, identical similar imported goods are not sold at or about the same time of importation of the goods being valued, the valuation will be unit price at the earliest date after importation but before the expiry of ninety days after such importation. If the imported goods, identical similar imported goods are not sold, but goods sold after processing, adjustments should be made for processing cost if any

**Illustration 2**

M/s. Anil& Co. imported goods declaring transaction value of Rs.500 per unit, which was rejected. Rules 4 and 5 of Import Valuation Rules are found inapplicable. M/s. Anil& Co. furnishes you the following data and requests you to compute the value of imported goods as per Rule 7:

- Sale price in India (after processing, etc.): Rs.1,120p.u. (inclusive of IGST @ 12.%);
- Commission to Indian agent on above sales: 5% of sale price (before VAT);
- Cost of processing after import: Rs.55 p.u.
- Freight and Insurance from Port of import onwards: Rs.40 and Rs.10 p.u.
- General expenses and Overheads in India are absorbed at: Rs.110 p.u.
- Net profit margin (normally earned by other also): 10% of sale price (before VAT)
- Rate of basic customs duty: 10%(no other duty leviable).
- Handling charges at customs port at time of import: Rs.45 p.u.

**Solution**

**Computation of Customs Value under Rule 7**

Particulars	Rs.
Selling price (inclusive of VAT)	
<b>Less:</b> (i) IGST (1,125 x 12.5% ÷112.5%)	
Sale price before VAT	
<b>Less:</b> (ii) Commission on sales	



(iii) Cost of processing in India	
(iv) Post - import freight and insurance (Rs.40 + Rs.10 = Rs.50 p.u.)	
(v) General Expenses (port - import)	
(vi) Net profit margin in India	
Cum duty price	
(This amount is inclusive of customs duty, as only the post import expenses and IGST have been deducted.)	
<b>Less:</b> (vii) Customs Duty @ 10 (635 × 10 ÷ 110)	
Customs Value	

4.25

### **RULE 8: COMPUTED VALUE**

If valuation is not possible by deductive method, computing the value can be used. This method can be used **before deductive value method** If Customs Officer approves

#### **In this method, value is the sum of**

- Cost of value of materials, labour and processing charges for producing the imported goods
- Amount General expenses and profit
- The cost or values of all other expenses under rule 10 i.e. transport, insurance, loading, unloading and handling charges

#### **Illustration 3**

Miss Jeen imported certain goods from a related person Mr. Bhairav of US and transaction value has been rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable, as no similar / identical goods are imported in India. Miss Jeen furnishes cost related data of imports and requests Customs Authorities to determine value accordingly as per Rule 8. The relevant data are:

i. Cost of materials incurred by Mr. Bhairav	\$ 600
ii. Making charges incurred by Mr. Bhairav	\$ 100
iii. Other direct expenses incurred by Mr. Bhairav	\$ 300
iv. Overheads incurred by Mr. Bhairav	\$ 250
v. Freight from Mr. Bhairav's factory to US port	\$ 120
vi. Loading charge at US port	\$ 30
vii. Normal net profit margin of Mr. Bahirav	20% of FOB
viii. Air freight from US port to Indian port	\$ 500
ix. Insurance from US port to Indian port	\$ 50
x. Exchange Rule	Rs.60 per \$

The Customs Authorities are of the opinion that since value as per Rule 7 can be determined at Rs.1,45,000, there is no need to apply Rule 8.



**Solution**

As per Rule 6, at option of importer, Rule 8 may be applied before Rule 7. Hence, request of Miss Jeen to apply Rule 8 is valid and since Rule 8 data is available, the Customs Authorities cannot force upon valuation as per Rule 7.

**Computation of value as per Rule 8 (Cost Sheet system)**

i. Cost of materials incurred by Mr. Bhairav	
ii. Making charges incurred by Mr. Bhairav	
iii. Other direct expense incurred by Mr. Bhairav	
iv. Overheads incurred by Mr. Bhairav	
v. Freight from Mr. Bhairav's factory to Us port	
vi. Loading charges at US port	
Total cost incurred by Mr. Bhairav	
vii. Normal net profit margin of Mr. Bhairav (20% of FOB or 25% of cost = 25% of \$ 1,400)	
<b>FOB price</b>	
viii. Air freight from US port to India (Air freight cannot exceed 20% of FOB; hence, restricted to 20% of \$ 1,750) (Rule 10(2)(c))	
ix. Insurance from US port to Indian port (Rule 10(2)(a))	
<b>CIF (Assessable value)</b>	
Exchange Rate	
<b>Assessable Value under Customs</b>	

**RULE 9: RESIDUAL METHOD**

- Similar to 'best judgment method
- This method can be considered if valuation is not possible by rule 3 to 8
- Mix of the all other rules and general provisions of all rules.
- Assessment will be done based on with available data in India.

**Residual value cannot be determined on the basis of**

- The selling price in India of the goods produced in India;
- A system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- The price of the goods on the domestic market of the country of exportation;
- The cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8
- The price of the goods for the export to a country other than India;
- Minimum customs values; or Arbitrary or fictitious values.

**RULE 11: DECLARATION BY THE IMPORTER**

The importer or his agent shall furnish -

- A declaration disclosing full and accurate details relating to the value of imported goods; and
- Any other statement, information or document including an invoice necessary for determining the value of imported goods
- Proper officer of customs can ask any document to verify the truth and accuracy of value of imported goods

*If the importer furnishes wrong declaration, submit wrong information, the provisions of Customs Act with regard to confiscation and penalty will apply.*

4.27

Illustration 1

Following particulars are available in respect of certain goods imported into India:

FOB price: US \$ 30,000 Exchange rate: Notified by RBI Rs.50 = US \$ ; Notified by CBIC Rs.48 = US \$ 1. Compute the assessable value as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Solution

The answer is as follows:

FOB Price	
Exchange rate notified by the CBIC (in force on date of presentation of bill of entry)	
FOB price in India Rs.	
<b>Add:</b> Cost of transport under Rule 10(2)(a) @ 20% of FOB , assuming it is unascertainable	
<b>Add:</b> Insurance under Rule 10(2)(c) @ 1.125% of FOB, assuming it is unascertainable	
= Transaction value	

Illustration 2

A material was imported by air at CIF price of 5,000 US \$. Freight paid was 1,500 US\$ and insurance cost was 500 US\$. The banker realized the payment from importer at the exchange rate of Rs.45 per dollar. CBIC notified the exchange rate as Rs.44.50 per US\$. Find the value of the material for the purpose of levying duty.

Solution

The answer is as follows:

FOB Price	
Exchange rate notified by the CBIC (in force on date of presentation of bill of entry)	
FOB price in India Rs.	
<b>Add:</b> Cost of transport under Rule 10(2)(a) @ 20% of FOB , (Actual is 1,500 \$; while in case of import by air, it cannot exceed 20% of FOB i.e. 20% of 3,000 = 600 \$ x Rs.44.5)	
<b>Add:</b> Insurance under Rule 10(2)(c) (Actual viz. 500 \$ x 44.5)	

**Illustration 3**

T Ltd. imported some goods from LMP Inc. of United States by air freight. You are required to compute the value for purpose of customs duty under the Customs Act, 1962 from the following particulars:

CIF Value	US \$ 6,000
Freight paid	US \$ 2,000
Insurance cost	US \$ 700

The bank had received payment from the importer at the exchange rate of US \$ 1 = Rs.46 while the CBIC notified exchange rate on the relevant date was US \$ 1 = Rs.45.5

(Make suitable assumptions where required and provide brief explanations to your answer.)

**Solution**

The answer is as follows:

FOB Price (CIF \$ 6,000 - Freight \$ 2,000 - Insurance \$ 700)	
Exchange rate notified by the CBIC (in force on date of presentation of bill of entry)	
FOB price in India Rs.	
Add: Cost of transport under Rule 10(2)(a) @ 20% of FOB , (Actual is 2,000 \$; while in case of import by air, it cannot exceed 20% of FOB i.e. 20% of 3,300 = 660 \$ x Rs.45.5)	
Add: Insurance under Rule 10(2)(c) (Actual viz. 700 \$ x 45.5)	
= Transaction value	

**Illustration 4**

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

		US \$
1.	Cost of the machine at the factory of the exporting country	10,000
2.	Transport charges incurred by the exporter from his factory to the port for shipment	500
3.	Handling charges paid for loading the machine in the ship	50
4.	Buying commission paid by the importer	50
5.	Freight charges from exporting country to India	1,000
6.	Exchange rate to be considered: 1 \$ = Rs.45	

**Solution**

The answer is as follows:

FOB Price (Cost \$ 10,000 + Transport in foreign country \$500 + Handling in foreign country for loading goods in ship \$ 50) (FOB comprises of all such charges upto the stage foreign supplier ships the goods and the risk is assumed by the importer).	
Exchange rate notified by the CBIC (in force on date of presentation of bill of entry)	
FOB price in India Rs.	
<b>Add:</b> Buying commission (Not includible in view of provisions of Rule 10(1)(a))	
<b>Add:</b> Cost of transport under Rule 10(2)(a) (1,000 \$ X Rs.45)	
<b>Add:</b> Insurance under Rule 10(2)(c) @ 1.125% of FOB, assuming it is unascertainable	
<b>= Transaction value</b>	

**Illustration 5**

Compute the assessable value for purpose of determination of Customs duty from the following data:

Machinery imported from USA by air (FOB price)	US \$ 4,000
Accessories compulsorily supplied along with the machinery	US \$ 1,000
Air freight	US \$ 1,200
Insurance charges	Actuals not available
Local agent's commission to be paid in Indian Currency	Rs.9,300
Transportation from India Airport to factory	Rs.4,000

**Solution**

The answer is as follows:

FOB Price (\$ 4,000 + Accessory \$ 1000) (As per section 19 read with Accessories(Conditions) Rules, 1963, since accessory is compulsorily supplied along with article, it is chargeable in the same manner as the article. Hence, its value is included in the value of the article.)	
Exchange rate notified by the CBIC (in force on date of presentation of bill of entry)	
FOB price in India Rs.	
Add: Local agent's commission (Includible under Rule 10(1)(a))	
Add: Cost of transport under Rule 10(2)(a) @ 20% of 20% of	

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2,49,300 or actual (1200 X 48) whichever is less		
Add: Transport from airport to factory is a post - importation activity and not includible		
Add: Insurance under Rule 10(2)(c) @ 1.125% of FOB, assuming it is unascertainable		
= <b>Transaction value</b>		

### **Illustration 6**

XYZ Industries Ltd., has imported certain equipment from Japan at an FOB cost of 2,00,000 Yen (Japanese). The other expenses incurred by M/s XYZ Industries in this connection are as follows:

- 1) Freight from Japan to Indian port: 20,000 Yen
- 2) Insurance paid to Insurer in India: Rs.10,000
- 3) Designing charges paid to Consultancy firm in Japan: 30,000 yen
- 4) M/s XYZ Industries had expended Rs.1,00,000 in India for certain development activities with respect to the imported equipment.
- 5) XYZ Industries Ltd. had incurred road transport cost from Mumbai port to their factory in Karnataka: Rs.30,000.

The Central Board of Indirect tax and Customs had notified for purpose of Section 14 of the Customs Act, 1962 exchange rate of 1 yen = Rs.0.3948.

The interbank exchange rate was 1 yen = Rs.0.40

M/s. XYZ Industries had effected payment to the Bank based on exchange rate 1 yen = Rs.0.4150.

The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees. Arrive at the assessable value for purpose of Customs duty under the Customs Act, 1962 providing brief notes wherever required with appropriate assumptions.

### **Solution**

The answer is as follows:

FOB	
<b><u>Add: Rule 10(1) inclusions</u></b>	
<b><u>Add: Rule 10(2) inclusions</u></b>	

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= CIF		

**Illustration 7**

From the following particulars, determine the assessable value of the imported equipment giving explanation for each item: (Rs.)

- 1) FOB cost of equipment (Japanese Yen) 2,00,000 Yen
- 2) Freight charges in Japanese Yen 20,000 Yen
- 3) Charges for development connected to equipment paid in India Rs.60,000
- 4) Insurance charge paid in India for transportation from Japan Rs.15,000
- 5) Commission payable to agent in India Rs.15,000.

Exchange rate as per RBI is 1 Yen = Rs.0.45; Exchange rate as per CBIC is 1 Yen = Rs.0.50

**Solution**

The answer is as follows:

FOB	
<u>Add: Rule 10(1) inclusions</u>	
<u>Add: Rule 10(2) inclusions</u>	
=CIF	

**Illustration 8**

Compute the assessable value of the machine imported by M/s. Exports India Pvt. Under the Customs Act, 1962.

FOB price of the machine (US \$)	10,000
Air freight paid (US \$)	2,500
Insurance for transit of machine	Not ascertainable
Cost of development work in India (Rs.)	40,000
Local agent's commission (Rs.)	10,000
Cost of local transport (Rs.)	5,000
Exchange rate applicable US \$ 1 = Rs.45. provide explanation for your answer.	



**Solution**

The answer is as follows:

FOB		
<u>Add: Rule 10(1) inclusions</u>		
<u>Add: Rule 10(2) inclusions</u>		
=CIF		

**Illustration 9**

Compute the assessable value and customs duty payable from the following information:

1	F.O.B value of machine	8,000 UK Pounds
2	Freight paid (air)	2,500 UK Pounds
3	Design and development charges paid in UK	500 UK Pounds
4	Commission payable to local agents	@ 2% of price of machine in Indian rupees
5	Date of bill of entry	24/10/20XX (Rate of BCD 10%; Exchange rate as notified by CBEC Rs. 100 per UK Pound)
6	Date of arrival of aircraft	20/10/20XX (Rate of BCD 20%; Exchange rate as notified by CBEC Rs. 98 per cent UK Pound)
7	Integrated tax leviable u/s 3(7) of the Customs Tariff Act, 1975 is 12%	
8	Insurance charges have been actually paid but details are not available.	

Compute the assessable value of the machine and the customs duty payable by Foreign Trade International Ltd.

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Solution

Computation of assessable value and duty thereon:

FOB value	
Add: design and development charges	
Total	
Total in Rs @ 100 per pound	
Add: Local Agency Commission (2% of 8000 UK pounds × 100)	
FOB Value	
Add: Freight (air) (2500 × 100 = 2,50,000) (restricted to 20% of FOB 8,66,000 × 20%)	
Add: Insurance 1.125% of FOB	
<b>Assessable value (C.I.F value)</b>	
Add: Basic custom duty @ 10%	
<b>Total</b>	
Add: SWS @ 10%	
<b>= Total for IGST u/s 3(7)</b>	
Add: IGST @12%	
<b>TOTAL</b>	
<b>Total custom duty payable</b>	

- (1) Design and development charges paid in UK and commission paid to local agent (since it is not buying commission) are includible in the assessable value
- (2) The rate of exchange notified by the CBEC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
- (3) If the goods are import by air, the freight cannot exceed 20% of FOB price.
- (4) Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods.
- (5) Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
- (6) Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the aggregate of the assessable value of the imported goods and BCD.

**Illustration 10**

Assessable value of an item imported is 1,00,000. Basic customs duty is 10%, additional duty of customs leviable under section 3(7) of the Customs Tariff Act is 12%,. Compute the amount of total customs duty payable.

**Note:** Ignore GST Compensation Cess

**Solution**

**Computation of customs duty payable**

	Particulars	Rs
1	Assessable value	
2	Basic customs duty @ 10%	
3	Sub-total	
4	Additional duty u/s 3(7) of the Customs Tariff Act @ 12% of 1,10,000	
5	Total customs duty payable [(2) + (4) + (5)]	

**Illustration 11**

From the following particulars, calculate assessable value and total customs duty payable:

- (i) Date of presentation of bill of entry: 20/06/20XX [Rate of BCD 20%; Inter-bank exchange rate: 61.60 and rate notified by CBEC 62].
- (ii) Date of arrival of aircraft in India: 30/06/20XX [Rate of BCD 10%; inter-bank exchange rate: 61.80 and rate notified by CBEC 63.00].
- (iii) Rate of integrated tax leviable under section 3(7) of the Customs tariff Act: 12%. Ignore GST Compensation Cess.
- (iv) CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars.

Particulars		Amount
CIF value		2000 US Dollars
<b>Less:</b> Freight	500	
Insurance	<u>100</u>	<u>600</u> US Dollars
FOB value		1400 US Dollars
<b>Add:</b> Air Freight [Note 1]	280	
Insurance (actual amount)	<u>100</u>	<u>380</u> US Dollars
		1780 US Dollars
		Rs.
Assessable value @ 62.00 [Note 2]		1,10,360.00
Basic Custom Duty @ 10% (a) [Note 3]		11,036.00
		1,21,396.00

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Integrated tax under section 3(7) (12% on 1,21,396.00) (b)		14,567.52
Total duty		25,603.52
Total duty (rounded off)		25,604.00

- 1) If the goods are imported by air, the freight and handling charges cannot exceed 20% of FOB Price.
- 2) Rate of exchange notified by CBEC on the date of presentation of bill of entry would be the applicable rate.
- 3) Rate of duty would be the rate as prevalent on the date of filing if bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].
- 4) Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the aggregate of the assessable value of the imported goods and BCD.

**Illustration 12**

Miss Priya imported certain goods weighing 1,000 kgs with CIF value US \$ 40,000. Exchange rate was 1 US \$ = Rs.45 on the date of presentation of bill of entry. Basic Customs Duty is chargeable @ 10% and Education Cess as applicable. There is no excise duty payable on these goods, if manufactured in India. As per Notification issued by the Govt. of India, Anti - Dumping Duty has been imposed on these goods. The Anti - Dumping duty will be equal to difference between amount calculated at @ USD 60 per kg and 'Landed Value' of goods. You are required to compute Customs Duty and Anti - Dumping Duty payable by Miss Priya.

**Solution**

Particulars	Rs.
CIF Value of Goods imported (USD 40,000 x Rs.45)	
<b>Add:</b> Handling Charges at 1% of CIF Value (Rs.18,00,000 x 1%)	
<b>Assessable value</b>	
<b>Add:</b> Basic Customs Duty (10% of AV of Rs.18,18,000)	
<b>Landed Value</b>	
<b>Value at USD 60 per kg</b> (1,000 kgs x USD 60 per kg x Rs.45 per USD)	
<b>Anti - Dumping Duty</b> (Value at USD Rs.27,00,000 Less Landed Value Rs.19,99,800)	

**CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007****Definitions**

(1) In these rules, unless the context otherwise requires:

a. “**goods of like kind and quality**” means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and

(2) For the purposes of these rules, person shall be deemed to be “related” only if:

- a) They are officers or directors of one another's businesses;
- b) They are legally recognized partners in business;
- c) They are employer and employee;
- d) Any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
- e) One of them directly or indirectly controls the other;
- f) Both of them are directly or indirectly controlled by a third person;
- g) Together they directly or indirectly control a third person; or
- h) They are members of the same family.

**RULE 3: DETERMINATION OF THE METHOD OF VALUATION**

The **value of export goods shall be the transaction value**. The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

- **Rejection of transaction value**: When the proper officer has reason to doubt the trust or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be rejected.

At the request of an exporter, the proper officer shall intimate in writing the ground for doubting the truth or accuracy of the value and provide a reasonable opportunity of being heard, before rejecting such value.

➤ **Reasons for raising doubts**:

(1) **Significant variation in value** at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

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(2) **Significantly higher value** compared to the market value of goods of like kind and quality at the time of export.

**Mis – declaration of goods** in parameters such as description, quality, quantity, year of manufacture or production.

If the value cannot be determined under this rule, then it shall be determined by proceeding sequentially through rule 4 to 6.

#### **RULE 4: DETERMINATION OF EXPORT VALUE BY COMPARISON**

**The value of the export goods shall be:**

The transaction value of goods of like kind and quality.

- a) Exported at or about the same time to other buyers.
- b) In the same destination country or in its absence another destination country
- c) Adjusted in accordance with the provisions given below.

**The proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including:**

- 1) Difference in the dates of exportation;
- 2) Difference in commercial levels and quantity levels;
- 3) Difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- 4) Difference in domestic freight and insurance charges depending on the place of exportation.

#### **RULE 5: COMPUTED VALUE METHOD**

**The value shall be computed value,** which shall include the following:

- 1) Cost of production, manufacture or processing of export goods;
- 2) Charges, if any, for the design or brand;
- 3) An amount towards profit.

#### **RULE 6: RESIDUAL METHOD**

Where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.



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## CUSTOM PROCEDURES

### Customs Import procedures

- Goods are imported in India or exported from India through sea, air or land.
- Goods can come through post parcel or as baggage with passengers.
- Procedures naturally vary depending on mode of import or export.

This topic covers import procedure through sea, air or land,

### **SECTION 2(16): ENTRY**

- Entry' in relation to goods means an entry made in a Bill of Entry(Sec 46 of custom act),
- Shipping Bill or Bill of Export(Sec 50 of custom act)
- Bill of Export ( for export of goods by vehicle)
- ~~Label or declaration accompanying the goods which contains description, quantity and value of the goods, in case of postal articles or~~

### **IMPORT PROCEDURE**

### **SECTION 2(31):PERSON IN CHARGE MEANS SEC**

- In case of vessel - its master
- In case of aircraft - its commander or pilot-in-charge
- In case of vehicle or other conveyance - its driver or other person in charge

### Duties and responsibilities of Person in charge

- He is responsible for submitting Import Manifest and Export Manifest
- He is responsible to ensure that the conveyance comes through approved route and lands at approved place only.
- He has to ensure that goods are unloaded after written order, at proper place. Loading also has to be only after permission.
- He has to ensure that conveyance does not leave without written order of Customs authorities.

### **He can be penalized for**

- Giving false declaration and statement
- Shortages or non-accounting of goods in conveyance

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## **SECTION 29:ARRIVAL AT VESSEL/AIRCRAFT AT CUSTOMS PORT/AIRPORT ONLY**

- Person-in-charge entering India shall call or land at customs port or customs airport only.
- While arriving by land route, the vehicle should come by approved *route* to 'land customs station' only.
- It can land at other place only if compelled by accident, stress of weather or other unavoidable cause.
- In such case, he should report to nearest *police station or Customs Officer*.
- Person in charge without the consent of officer permits any goods to be unloaded from, or any of the crew or passengers to depart from the vicinity.
- Where the departure or removal is necessary for reasons of health, safety or the preservation of life or property it can be carried on.

## **SECTION 30: DELIVERY OF IMPORT GENERAL MANIFEST / REPORT**

- Person-in-charge has to submit IMF /import report prior to arrival of a vessel or aircraft.
- *E filing of import manifest is compulsory however commissioner of custom may in cases allow it to submit in any manner*

### **Time limit for submission of import general Manifest or Import Report**

Mode of transport	Document	Time limit	Penalty
Vessel (sea port)	IGM (electronics form )	Before arrival of the vessel	Less than equal to Rs 50,000
Aircraft (Airport)	IGM (electronics form )	Before arrival of the vessel	Less than equal to Rs 50,000
Vehicle land custom station)	Import report (Manual& Electronic from)	Within 12 hrs. of arrival	Less than equal to Rs 50,000

## **CONTENTS AND FORM OF IGM / IR (IMPORT GENERAL MANIFEST / IMPORT REPORT)**

Different forms of IGM / IR have been prescribed for the aircrafts, vessels and the vehicles. The form of IGM / IR is prescribed by

- The Import Manifest (Vessels) Regulations 1971 in the case of vessels;
- The Import Manifest (Aircraft) Regulations 1976 in the case of aircrafts;
- The Import Report (Form) Regulations 1976 in the case of vehicles.

***All the three regulations are substantially similar and provide for the following:***

1. The manifest / report should be delivered in duplicate and should cover all the goods carried in the aircraft / vessel / vehicle.

2. The manifest / import report has to be in 4 parts as under:

- a. General declaration
- b. Cargo declaration
- c. Vessels stores list
- d. A list of private property in the possession of the master, officers and crew.
- e. Passenger manifest in case of aircrafts.

3. The cargo list is categorized in the manifest / report into the following categories and shall be delivered in separate sheets.

- a. Cargo to be landed;
- b. Unaccompanied baggage;
- c. Goods to be transshipped;
- d. Same bottom or retention cargo.

4. In the cargo declaration, there should be separate mention about

- a. Arms
- b. Ammunition
- c. Explosives
- d. Narcotics
- e. Dangerous drugs
- f. Gold and
- g. Silver

This declaration should be given irrespective of whether these are for landing, or for transshipment, or for being carried as same bottom cargo. The details about the above should be given in separate sheets and should be set out in the cargo a nil declaration should be made.

5. The person delivering the import manifest or report should subscribe in the declaration as to the truth of its contents.

The general declaration will give particulars about name of the vessel, nationality, tonnage, name of the shipping line, last port of call, port arrival and date and time of arrival, name of the master, nationality of the master, name and address of the local steamer / shipping agent, ports called during the present voyage, number of crew, number of passengers and the following documents are to be enclosed with the general declaration:

- a. Cargo declaration
- b. Store list
- c. Private property list
- d. Crew list



e. Passenger list

f. Maritime declaration of health

### **30A. PASSENGER AND CREW ARRIVAL MANIFEST AND PASSENGER NAME RECORD INFORMATION**

- (1) The person in charge of a conveyance that enters India from any place outside India or any other person as may specified by the Central Government by notification gazette, shall deliver to the proper officer -
- (i) The passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and
- (ii) The passenger name record information of arriving passengers, In such form, containing such particulars, in such manner and within such time, as may be prescribed.
- (2) Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person referred to in sub-section (1) shall be liable to such penalty, not exceeding 50,000 rupees, as may be prescribed.

**Passenger name record information [Section 2(30B)]:** Means the records prepared by an operator of any aircraft or vessel or vehicle or his authorized agent for each journey booked by or on behalf of any passenger

### **SECTION 31: ENTRY INWARDS**

- (a) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel. ( Only for Vessels and not for Aircraft and Vehicles')
- (b) No such order shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.
- (c) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

### **SECTION 32: IMPORTED GOODS NOT TO BE UNLOADED UNLESS MENTIONED IN IMPORT MANIFEST OR IMPORT REPORT**

No imported goods required to be mentioned under the regulations in as import manifest or import report shall, -

- Except with the permission of the proper officer,
- Be unloaded at any customs station,



- Unless they are specified in such manifest or report for being unloaded at the customs station.

### **SECTION 33: UNLOADING AND LOADING OF IMPORT/EXPORT GOODS AT APPROVED PLACES ONLY**

Except with the permission of the proper officer,-

- No imported goods shall be unloaded, and
- No export goods shall be loaded.

### **SECTION 34: IMPORT/EXPORT GOODS NOT TO BE UNLOADED OR LOADED EXCEPT UNDER SUPERVISION OF CUSTOMS OFFICER:**

Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer.

*However, -*

- The Board may, by notification in the Official Gazette, give **general permission** and
- The proper officer may in any particular case give **special permission**,  
For any goods or class of goods to be unloaded or loaded ***without the supervision of the proper officer.***

### **SECTION 35: RESTRICTIONS ON GOODS BEING WATER-BORNE, OR, BOAT NOTE PROVISIONS**

(a) No imported goods shall be water-borne for being landed from any vessel, and

(b) No export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a **BOAT-NOTE** in the prescribed form.

**Use:** In fact, boats are used to bring imported goods from ship to the shore and carry export goods from the shore to ship, when such ship doesn't get berth at the port and is within the waters.

**Permission of being water-borne without boat-note: However, -**

- The Board may, by notification in the Official Gazette, give general permission and  
The proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

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## **SECTION 36: RESTRICTIONS ON UNLOADING AND LOADING OF GOODS ON HOLIDAYS, ETC.**

(a) No imported goods shall be unloaded from, and

(b) No export goods shall be loaded on,

**Any conveyance on -**

- any Sunday or on any holiday observed by the Customs Department or
- any other day after the working hours,

**Except after -**

- Giving the prescribed notice and
- **On payment of the prescribed fees**, if any. However, no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

## **SECTION 37: POWER TO BOARD CONVEYANCES**

**The proper officer -**

(a) May, at any time, board any conveyance carrying imported goods or export goods and

(b) May remain on such conveyance **for such period** as he considers necessary.

## **SECTION 38: POWER TO REQUIRE PRODUCTION OF DOCUMENTS AND ASK QUESTIONS**

For the purposes of carrying out the provisions of this Act, the proper officer may require the **person-in-charge** of any conveyance or animal carrying imported goods or export goods -

(a) To produce any document and

(b) To answer any questions and

There upon such person shall produce such documents and answer such questions.

## **PROCEDURE TO BE FOLLOWED BY IMPORTER**

1. Filing of Bill of entry
2. Filing of other documents for assessment

## **SECTION 45: CUSTODY OF IMPORTED GOODS**

The person approved by the Commissioner of Customs is referred to as Custodian.

Place	Custodian
Custom port	Port trust or company managing a private wharf
Custom airport	Airports authority of India
Railway station	Station master



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Inland container depots	Container corporation of India	

### Notes

- All imported goods unloaded in a customs area shall remain in the custody of Port/airport authorities until they are cleared
- The person having custody of any imported goods in a customs area, shall keep a record of such goods and send a copy thereof to the proper officer;
- Shall not permit such goods to be removed from the customs area without written permission of the proper officer.

If any imported goods are pilfered (Sec 13) after unloading thereof in a customs area port **authorities are liable to pay duty.**

### SECTION 46:FILING OF BILL OF ENTRY BY IMPORTER

The importer of any goods other than goods intended for transit / transhipment shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form.

#### There are 3 types of bills of entries

- Form I -for home consumption
- Form II -for warehousing (into bond)
- Form III -for ex - bond clearance for home consumption.

#### The bill of entry should be presented, in quadruplicate as follows:

Original, meant for the customs authorities for assessment and collection of duty;

Duplicate, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;

Triplicate, as a copy for record for the importer; and

Quadruplicate, as a copy to be presented to the bank or Reserve Bank of India for the purpose of making remittance for the imported goods.

A bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

**Bill of Lading** : The Bill of Lading given by carrier of the goods is importer's document of titles of goods. The Bill of Lading covers all the goods imported with full description.

**Content of Bill of Entry** : The importer is required to declare in the Bill of Entry amongst other things the particulars of packages, the descriptions of the goods, in terms of the description given in the Customs Tariff to enable proper classification of the goods and the correct value of the goods for the

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determining the amount of duty. Since the assessment is based on the declaration made by the importer, the onus is cast upon him to make a declaration and solemn affirmation about the truth of the contents in the Bill of Entry.

**Incomplete Bill of Entry** : If the importer unable to furnish all the particulars of the goods required under this sub-section and if he confesses his predicament to the department, the proper officer may, pending the production of such information, permit him,

- a) To examine the goods in the presence of an officer of customs, or
- b) To deposit the goods in a public warehouse appointed under section 57 without warehousing the same. Accordingly such goods shall not deemed to be warehoused goods and no provision of warehousing shall apply. [Warehousing without Warehousing]

### **Time for filing bill of entry**

**Normal bill**: A bill of entry may be presented at any time after the delivery of the import manifest or import report as the case may be:

**Advance bill**: A bill of entry may be presented even before the delivery of such manifest if the vessel or the aircraft by which the goods have been shipped is **expected to arrive within 30 days from the date of such presentation**.

However, if the vessel or aircraft does not arrive within 30 days, then it shall become void, and the importer is then required to present a fresh bill of entry for the same goods.

**Verification**: The importer shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

### **Examination of goods / Deposit in Warehouse**

On a request made by the importer, for want of full information required for making assessment, the proper officer may, permit him, prior to filing bill of entry:

- a. To examine the goods in the presence of an officer of customs, or
- b. To deposit the goods in a public warehouse without warehousing the same.

**Substitution of Bill**: If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.





## SECTION 47: PAYMENT OF CUSTOMS DUTY

- Regular importers and *Custom House Agents* through current account with Customs department, or
- Duty can be paid in cash/DD through GAR 7 challan in designated banks.
- After payment of duty, delivery of goods can be taken from custodians (port trust) after paying their dues.

**The importer shall pay the import the -**

- On the date of presentation of the bill of entry in the case of self-assessment; or
- Within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
- In the case of deferred payment, from such due date as may be specified by rules made in this behalf,

And if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, as the rate, not less than 10% but not exceeding 36% per annum, as may be fixed by the Central Government, by notification in the Official Gazette. **[applicable rate 15%]**

**Provided that** the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically

**Provided also that** if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reason to be recorded, waive the whole or part of any interest payable under this section.

- Regular importers and Custom House Agent can pay through current account maintained with Customs department, or
- Duty can be paid in cash / DD through GAR 7 challan in designated banks.

### Deferred Payment of Import Duty Rules, 2016 N/N 134/2016 as amended by N/N 28/17

**Definitions.** - (1) In these rules, unless the context otherwise requires, -

- "Act" means the Custom Act, 1962 (52 of 1962);
- "Due date" means the date specified in rule 5 of these rules;
- "Eligible importer" means any class of importers notified under proviso to sub-section (1) of section 47 of the Act.



In this respect, Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-three) to make deferred payment of import duty (eligible importers).

AEO means authorized Economic Operator certified by the Directorate General of Performance Management under CBEC.

**Application.** - These rules shall apply to eligible importer who have been notified under the proviso to sub-section (1) of section 47 of the Act.

**Information about intent to avail benefit of notification. -**

- 1) An eligible importer who intends to avail the benefit under sub-section (1) of section 47 of the Act shall intimate to the Principle Commissioner of Customs or the Commissioner of Customs, as the case may be, having jurisdiction over the port of clearance, his intention to avail the said benefit.
- 2) The Principle Commissioner of Customs or the Commissioner of Customs, as the case may be, shall, upon being satisfied with the eligibility of the importer to pay the duty under these rules, allow the eligible importer to pay the duty by due dates specified in rule 5.

**Payment of duty. -**

The eligible importer shall pay the duty by the dates specified hereunder inclusive of the period (excluding holidays) as mentioned in sub-section (2) of section 47 of the Act, namely: -

	For goods corresponding to Bill of Entry returned for payment from	Due date of payment
(a)	1 <sup>st</sup> day to 15 <sup>th</sup> day of any month	16 <sup>th</sup> day of that month
(b)	16 <sup>th</sup> day till the last day of any month other than March	1 <sup>st</sup> day of the following month
(c)	16 <sup>th</sup> day till the last day of March	31 <sup>st</sup> March

**Manner of payment. -**

The eligible importer shall pay the duty electronically: provided that the Assistant Commissioner or the Deputy Commissioner of Customs, as the case may be, for reasons to be recorded in writing, may allow payment of duty by any mode other than electronic payment.

**Deferred payment not to apply in certain cases. -**

An eligible importer who fails to pay duty in full by due date more than once in a period of three consecutive months shall not be permitted to make deferred payment.

Provided that the facility of deferred payment shall not be restored unless the eligible importer has paid the duty in full along with the interest.

### **Exemption in respect of certain goods. –**

Nothing contained in these rules shall apply to the goods which have not been assessed or not declared by the importer in the entry made under the Act.

## **SECTION 48: PROCEDURE IN CASE OF GOODS NOT CLEARED**

- Goods must be cleared within 30 days after unloading.
- Commissioner of Customs can grant extension.(Amendment Finance Act 2013)
- If not cleared goods can be sold after giving notice to importer.
- Animals, perishable goods and hazardous goods no time limit
- Arms & ammunition can be sold only with permission of CG.

## **PROCEDURE FOR SALE OF GOODS AND APPLICATION OF SALE PROCEEDS (SECTION 150)**

- a. After notice to the Owner thereof, goods shall be sold - (i) by public auction, or (ii) by tender, or (iii) with the consent of the owner in any other manner.
- b. The proceeds of such sale shall be applied in the following order:
  - Payment of expenses of sale,
  - Payment of Freight and other charges, if any, to the carrier,
  - Payment of Duty, if any, on the goods sold,
  - Payment of charges due to the person having custody of the goods
  - Payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs,
  - Balance, if any, shall be paid to the Owner of the goods.

## **SECTION 49:STORAGE OF IMPORTED GOODS IN WAREHOUSE PENDING CLEARANCE.**

Any imported goods, whether dutiable or not, entered for home consumption, the AC/DC is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a warehouse, but such goods shall not be deemed to be warehoused goods This is also known as **warehouse without warehousing. (max 30 days)**Extension given by CC for a further period not exceeding 30 days at time.

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**EXPORT PROCEDURE****Procedure to be followed by 'person in charge'**

- Person in charge should file Export Manifest/Export Report in prescribed form before departure.
- Person in charge should declare that contents in EMF are true.

**Procedures to be followed by Exporter**

- Exporter should obtain IEC CODE from DGFT. It is a PAN based number
- Exporter should Open current account with designated bank for credit of duty drawback claims
- Register licenses / advance license / DEPB etc. at the customs station is required, if exports are under Export Promotion Schemes
- *Exporter has to submit 'shipping bill' for export by sea or air and 'bill of export' for export by road. ( Sec 50)s*

**SECTION 50: TYPES OF SHIPPING BILL**

**Meaning:** It is an application by exporter to customs Office for clearance of goods for exportation.

**Presentation:** The exporter of any goods shall make entry thereof by presenting electronically on the custom automated system to the proper officer.

In the case of goods to be exported in a vessel or aircraft - a shipping bill and

In the case of goods to be exported by land - a bill of export.

**Provided** that the Principle Commissioner of Custom or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, on the custom automated system allow an entry to be presented in any other manner.

**Time Limit :** Normally a Shipping Bill is filed only after an entry outward but under special circumstances the Commissioner of Customs may permit advance Shipping Bill to be filed.

**Declaration :** The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its Contents.

The exporter who presents a shipping bill or bill of export under this section shall ensure the following namely -

- a) The accuracy and completeness of the information given therein.
- b) The authenticity and validity of any document supporting it; and



- c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

### **SECTION 51: LET EXPORT ORDER**

The customs officer will

- Will verify the contents
- To satisfy that goods are not prohibited for exports
- Ensure applicable duty if any is paid,
- Will permit clearance by giving 'let ship' or 'let export' order.

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section(1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at @ 15% p.a.

### **SECTION 51A: PAYMENT OF DUTY, INTEREST, PENALTY, ETC.**

- (1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder using authorized mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.
- (2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable may be refunded in such manner as may be prescribed.
- (4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of

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goods, as may be specified in the notification, from all or any of the provision of this section.

### **ENTRY OUTWARD - SEC 39**

The vessel should be granted 'Entry Outward'.

- Loading can start only after entry outward is granted.
- Loading should be done with permission of proper officer
- Export goods can be loaded only after Shipping Bill or Bill of Export, duly passed
- Shipping bill is handover by Exporter to the person-in-charge of conveyance.

### **SECTION 40: IN CASE OF BAGGAGE AND MAILBAGS, SHIPPING BILL IS NOT NECESSARY, BUT PERMISSION OF CUSTOMS OFFICER IS REQUIRED**

Export goods can be loaded after shipping bill or bill of export, duty passes is handed over by the exporter to the person in charge of conveyance.

In case of baggage and mailbags, shipping bill is not necessary, but permission of custom officer is required.

### **SECTION 41: DELIVERY OF EXPORT MANIFEST**

The person in charge of a conveyance carrying export goods shall, **before departure**, of the conveyance from a customs station, deliver to the proper officer.

- In the case of a **vessel or aircraft**, an **export manifest by presenting electronically**, and
- In the case of a **vehicle**, an **export report**

Provided that the Commissioner of Customs may, in cases where it is not feasible to deliver the export manifest by presenting electronically, allow the same to be delivered in any other manner.

The agent may also submit the export manifest or report within **7 days** from the date of departure of the conveyance. But for this purpose he is required to date of departure of the conveyance. But for this purpose he is required to furnish sufficient security as the proper officer may determine.

The person, shall at the foot of export manifest or report, make and subscribe to a declaration as to the truth of its contents.

If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be **amended or supplemented**.

**Preparation of EGM / ER:** The procedure for preparation of EGM / ER is as follows:



1. In the case of shipment by sea, the ship's officer gives a receipt after he has received the consignment on board the ship. This receipt is called mate receipt. It is surrendered to the steamer agent or the agent who issues the bill of lading.
2. In the case of shipment by air, after the cargo is delivered to the airways for loading, the airways issue an air consignment note.
3. In the case of train and lorry a railway receipt or a lorry receipt as the case may be is issued as soon as the consignment is received by the carrier.

The export general manifest or report is the consolidated report of all such Bills of Lading / air consignment notes / railway receipts / lorry receipts issued.

**Form and Content of Export General Manifest or Export Report:** The form of the export general manifest / export report is prescribed under the following:

- a. The Export Manifest (Vessel) Regulations, 1976
- b. The Export Manifest (Aircraft) Regulations, 1976
- c. The Export Manifest (Form) Regulations, 1975

**In all the three regulation the common features are as follows:**

1. The manifest / report shall be delivered in duplicate.
2. It shall consist of
  - a. Cargo report
  - b. Vessel's store list
  - c. Private property list of master, officers and crew
  - d. In case the vessel / aircraft / conveyance carries passengers, a passenger manifest.
3. The cargo list shall give the following details in separate sheets.
  - a. Cargo shipped
  - b. Cargo transshipped
  - c. Cargo lying in the vessel / aircraft, but not landed or transshipped (same bottom cargo)
  - d. Cargo in respect of which drawback is claimed.
  - e. In case of the vessel, the dutiable goods, including arms and ammunition forming part of the ordinary equipment of a vessel.
4. **Specific declaration should be made in respect of the following cargo, irrespective of whether it comprises same bottom cargo, shipment or transshipment.**
  - i. Arms
  - ii. Ammunition
  - iii. Explosives
  - iv. Narcotics





v. Dangerous drugs or

vi. Gold

If the vessel / aircraft does not carry any such cargo, a nil report should be furnished.

### **SECTION 41A PASSENGER AND CREW DEPARTURE MANIFEST AND PASSENGER NAME RECORD INFORMATION.**

- 1) The person - in - charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer -
  - (i) The passenger and crew departure manifest; and
  - (ii) The passenger name record information of departing passengers,In such form, containing such particulars, in such manner and within such time, as may be prescribed.
- 2) Where the passenger and crew departure manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person - in - charge or the other person referred to in sub-section (1) shall be liable to such penalty, not exceeding 50,000 rupees, as may be prescribed

### **SECTION 42: CONVEYANCE TO LEAVE ON WRITTEN ORDER**

- The vessel or aircraft, which has brought imported goods, which carry export goods cannot leave that customs station unless Customs Officer gives a written order
- Such order is given only after export manifest is submitted
- Shipping bills or bills of export, bills of transshipment etc. are submitted
- Duties on stores consumed are paid or payment of the same is secured
- No penalty is leviable, export duty, if applicable, is paid. -

### **SECTION 43: EXEMPTION OF CERTAIN CLASSES OF CONVEYANCES FROM CERTAIN PROVISIONS OF THIS CHAPTER**

1. The provisions of sections 30, 41 and 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants.
2. The Central Government may, by notification in the Official Gazette, exempt the following classes of conveyances from all or any of the provisions of this chapter:
  - a. Conveyance belonging to **Indian or foreign Government**
  - b. Vessels and aircraft which **temporarily enter India by reason of any emergency.**



## 6

## GOODS IN TRANSIT / TRANSHIPMENT

**TRANSIT AND TRANSSHIPMENT OF GOODS SEC 53 & SEC 54****Transit Goods - Section 53**

Where any goods imported in a conveyance and mentioned in the import manifest/ import report as for transit in the same conveyance to

- Any place outside India or
- To any customs station in India

The proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed

Such goods should not be 'prohibited goods' under section 11 of Customs Act.

The conveyance may be vehicle, ship or aircraft.

**Transshipment of goods sec 54**

- ***Transshipment means transfer from one conveyance to another.***
- Goods imported in any customs station can be transshipped without payment of duty,
- The conveyance may be vehicle, ship or aircraft
- Such transshipment may be to any major port or airport in India
- The goods can be transshipped to any other customs station in India if customs officer is satisfied that the goods are **Bonafide** intended for transshipment to any customs station.
- The facility is available at all customs ports and Inland Container Depots (ICDs)
- Goods to be transshipped must be specified in **Import Manifest**
- ***'Bill of Transshipment' should be submitted to Customs Officer.***
- Such goods should not be 'prohibited goods' under section 11 of Customs. If so Customs officer should seal the goods during transshipment.
- ***A bond has to be executed for the purpose.***
- After execution of bond, a certificate from customs officer has to be submitted within **one month** that goods have been properly transferred...

**Distinction between Transit and Transshipment -**

- In 'transit' goods continue to be on same vessel, while in transshipment, goods are transferred to another vessel / vehicle. Hence, procedures are also different.

6.1

**SECTION 55: LIABILITY OF DUTY ON GOODS TRANSITED UNDER TRANSIT AND TRANSSHIPMENT**

- Where any goods are allowed to be transited or transshipped to any customs station, On their arrival at such station, goods shall be liable to **duty as if first import**,

**SECTION 56: TRANSPORT OF CERTAIN CLASSES OF GOODS SUBJECT TO PRESCRIBED CONDITIONS**

Imported goods may be transported without payment of duty form

- a) One land custom station to another
- b) One part of India to another part through any foreign territory

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## 7

**CHAPTER 7: WAREHOUSING****INTRODUCTION TO WAREHOUSING**

- After the goods are imported, the importer can keep the goods in warehouse without payment of customs duty.
- He can pay customs duty and clear imported goods from the warehouse as and when needed.
- This facility is available to exporters/manufacturers as well as direct importers.

**Advantages of warehousing**

- Sufficient stock available at all the time.
- Importer can postpone payment of duty.
- It facilitates re-export of goods.

**DIAGRAM**

7.1

**TYPES OF WAREHOUSES****SECTION 57: APPOINTING OF PUBLIC WAREHOUSES**

At any warehousing station, the AC/DC may appoint public warehouses where in *dutiable goods may be deposited*.

**SECTION 58: LICENSING OF PRIVATE WAREHOUSES**

At any warehousing station, where which facilities for deposit in a public warehouse are not available, AC/DC may license private warehouses wherein dutiable imported goods are stored.

**SEC 58A: LICENSING OF SPECIAL WAREHOUSES –**

- (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a special warehouse wherein dutiable goods may be deposited and may such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.
- (2) The Board may, by notification in the official *Gazette*, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

**SEC. 58B CANCELLATION OF LICENSE –**

- (1) Where a licensee contravenes any of the provisions of this act or the rules or regulations made thereunder or braches any of the conditions of the license, the Principal Commissioner of Customs or Commissioner of Customs may cancel the license granted under section 57 or section 58 or section 58A:  
Provided that before any licence is cancelled, the licence shall be given a reasonable opportunity of being heard.
- (2) The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehousing during the pendency of an enquiry under sub-section (1).
- (3) Where the operation of a warehouse is suspended under sub-section (2), no goods shall be deposited in such warehouse during the period of suspension:  
Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.
- (4) Where the license issued u/s 57 or 58 or 58A is cancelled, the goods warehoused shall, within 7 days from the date on which order of such cancellation is served on the licensee or within such extended period as the

7.2



proper offer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.

### SECTION 59: WAREHOUSING BOND

- The importer of in respect of warehoused goods and assessed to duty shall execute a bond in a sum equal to **thrice the amount of the duty**
- To observe **all the provisions of this** Act and the rules and regulations in respect of such goods;
- To pay on or before a date specified in a notice of demand, all duties, and interest, penalties for violation of act or rules ;
- **The AC/DC may permit an importer submit a general bond for specified amount for specified period.**
- Where the whole of the goods or any part thereof are transferred to **another person**, the proper officer may accept a fresh bond from the transferee.

### DIAGRAM

7.3


**SECTION 60: PERMISSION TO STORE GOODS IN WAREHOUSE.**

After filing the bond in respect of goods, the proper officer may make an order permitting the deposit of goods in a warehouse.

**SECTION 61: PERIOD FOR WHICH GOODS MAY REMAIN WAREHOUSED**

Particulars	Capital goods for 100% EOU	Other goods for 100% EOU	Goods of importers (other than 100% EOU)
Period for which goods may remain in warehouse	Until clearance	Until clearance	1 year
Extension of warehousing period	No need		Principal commissioner or commissioner 1 year at a time
Reduction of warehousing period	No reduction is permissible		If goods are likely to be deteriorate, the commissioner may reduce the period to such extent as he deems fit.
Interest	No interest		15% after expiry of 90 days

**SECTION 64: OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS**

With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same-

- Inspect the goods;
- Separate damaged or deteriorated goods from the rest;
- Sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;
- Deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- Show the goods for sale; or
- Take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.



**SECTION 65: MANUFACTURE AND OTHER OPERATIONS IN  
RELATION TO GOODS IN A WAREHOUSE**

- With the sanction of the AC/DC and subject to such conditions, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse.
- Prescribed conditions may include bond, fees for supervision, maintaining accounts, order of special audit by cost accountant etc.,

**Duty on material contained in waste or refuse**

- a. If the finished goods resulting from such operations are exported, and
  - i. **Waste or refuse is destroyed:** import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse:
  - ii. **Waste or refuse is sold in India:** Duty is paid on such waste or refuse as if it had been imported into India in that form;
- b. If the finished goods resulting from such operations are **cleared for home consumption** import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse.

**DIAGRAM**

**SECTION 66: POWER TO EXEMPT IMPORTED MATERIALS USED IN THE MANUFACTURE OF GOODS IN WAREHOUSE**

- If any imported materials are used in manufacturing operations in warehouse
- And the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods.
- CG if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette.
- Exempt the imported materials from the whole or part of the excess rate of duty.

**CLEARANCE OF GOODS FROM BONDED WAREHOUSE**

Clearance from warehouse can be any of the following

- a. Transfer to other bonded warehouse Section 67
- b. Clearance to Home consumption section 68
- c. Clearance for export- section 69

**SECTION 67: TRANSFER TO OTHER BONDED WAREHOUSE**

- Transit bond for customs duty involved backed by bank guarantee / security should be furnished.
- In the case of EOU, bank guarantee for transfer of goods is not required.

**DIAGRAM**

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**SECTION 68: REMOVAL FOR HOME CONSUMPTION**

**Any warehoused goods may be cleared from the warehouse for home consumption, if:**

- a) A bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
- b) The import duty, interest, fine and penalties payable in respect of such goods have been paid; and
- c) An order for clearance of such goods for home consumption has been made by the proper officer.

**Provided that the order referred to in clause © may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.**

Provided further that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.

Provided also that the owner of any such warehouse goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this act or any law for the time being in force.

**SECTION 69: CLEARANCE FOR EXPORT**

**1) Any Warehoused goods may be exported to a place outside India without payment of import duty if**

- a) A shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods.
- b) The export duty, fine and penalties payable in respect of such goods have been paid; and
- c) An order for clearance of such goods for export has been made by the proper officer.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

**2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that warehoused goods of any specified description.**

- Are likely to be smuggled back into India, it may,
- By notification in the Official Gazette,
- Direct that such goods shall not be exported to any place outside India



without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

### **SECTION 70: ALLOWANCE IN CASE OF VOLATILE GOODS**

1. When any warehoused goods to which this section applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the AC or DC of Customs may remit the duty on such deficiency.
2. This section applies to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may, by notification in the official gazette, specify.

### **ESSENTIAL INGREDIENTS OF SECTION 70(1)**

1. The goods should be warehoused goods;
2. The provisions of this section should apply to such goods by virtue of a notification under sub section (2)
3. The goods should be found deficient in quantity at the time of removal;
4. The deficiency should be on account of natural loss;
5. The import duty leviable on such deficiency may be remitted;
6. The AC or DC is empowered to grant the remission.

### **NOTIFICATION UNDER SECTION 70(2)**

Under MF(DR) notification no. 122 / 63 - Cus dated 11.5.1963 as amended subsequently, the following goods have been specified as goods to which the provision of section 70 apply when they are deposited in a warehouse, namely:

- a. Aviation fuel, motor spirit, mineral turpentine;
- b. Acetone menthol raw Naptha
- c. Varpourising oil, kerosene, high speed diesel oil
- d. Batching oil, diesel oil, furnace oil
- e. And Etylene Dichloride kept in tanks and liquid helium gas kept in container;
- f. Wine, spirit, and beer, kept in casks.

### **SECTION 71: GOODS NOT TO BE TAKEN OUT OF WAREHOUSE EXCEPT AS PROVIDED BY THIS ACT**

No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or re - exportation, or for removal to another warehouse, or as otherwise provided by this Act.

### **SECTION 72: GOODS IMPROPERLY REMOVED FROM WAREHOUSE, ETC:**

1. In any of the following cases:
  - a. Where any warehoused goods are removed in contravention of section 71;

- b. Where any warehoused goods have not been removed within the period u/s 61;
- c. Where any warehoused goods have been taken as samples without payment of duty;
- d. Where any goods are not duly accounted for to the satisfaction of the proper officer;  
The proper officer may demand, and the owner of such goods shall forthwith pay, the **full amount of duty** together with penalties, rent, interest and other charges.
2. If any owner fails to pay such amount, the proper officer may cause to be **detained and sold**, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may select.

### **SECTION 73: CANCELLATION AND RETURN OF WAREHOUSING BOND**

When the whole of the goods covered by any bond executed u/s 59 have been cleared for home consumption or exported or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

### **SECTION 73A: CUSTODY OF GOODS**

- 1) All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or 58 or 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or moved as otherwise provided under this Act.
- 2) The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.
- 3) Where any warehoused goods are removed in convention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

Particulars	Warehouse - private / Public	Special Warehouse
Appointment of warehouse keeper	<ul style="list-style-type: none"> <li>A licensee shall appoint a warehouse keeper having experience in warehousing operations &amp; customs procedures, for discharge of functions on his behalf</li> <li>The warehouse keeper shall obtain digital signature from prescribed authorities for filing of electronic document as required under the Act.</li> </ul>	
Facilities,	A licensee shall provide:	



equipment and personnel	<p><b>(a)</b> Sufficient facilities, equipment and personnel:</p> <ul style="list-style-type: none"> <li>To ensure controlled access to warehouse and secured storage of the goods in it and</li> <li>For examination of goods by customs officers;</li> </ul> <p><b>(b)</b> A computerized system for accounting of goods.</p>	
Control of Bond Officer	<ul style="list-style-type: none"> <li>No physical control of Bond Officer; only record based control is there.</li> <li>Only in case of removal of goods export, presence of bond officer is required.</li> </ul>	<ul style="list-style-type: none"> <li>The bond officer shall cause the special warehouse to be locked.</li> <li>Any removal or deposit of goods from / to the warehouse shall only be in the presence of the Bond Officer.</li> </ul>
Receipt of goods	The licensee is vested with goods into warehouse from customs station of import or another warehouse	<ul style="list-style-type: none"> <li>Licensee shall receive / permit unloading of any goods at the warehouse only in the presence of the Bond Officer.</li> <li>Once bond officer permits deposit of goods in warehouse, licensee shall:</li> </ul> <p><b>d)</b> Record goods received in the warehouse and</p> <p><b>e)</b> Cause an acknowledgement of receipts of goods to be delivered to proper officer at customs station in import / proper officer of the warehouse of dispatch, as the case may be.</p>
Transfer of goods to another warehouse	<ul style="list-style-type: none"> <li>Licensee shall transfer warehoused goods to another warehouse only when the owner of the goods produce the form for transfer of goods bearing the orders of the bond officer permitting such transfer.</li> </ul>	<ul style="list-style-type: none"> <li>Licensee shall transfer warehoused goods to another warehouse only with the permission of the Bond Officer on the form for transfer of goods.</li> <li>Once bond officer permits removal of goods</li> </ul>



	<ul style="list-style-type: none"><li>• After the goods are removed and loaded on means of transfer, licensee would:<ul style="list-style-type: none"><li>a. Affix a one-time-lock to the means of transport,</li><li>b. Endorse the number of one-time lock on prescribed form for transfer of goods and on transportation documents and</li><li>c. Cause one copy of each of these documents to be delivered to bond officer.</li><li>d. Record the removal of goods.</li></ul></li></ul>	<p>from warehouse, licensee shall, in the presence of bond Officer,;</p> <ul style="list-style-type: none"><li>a. Cause the goods to be loaded onto the means of transport, and</li><li>b. Affix a one-time-lock to the means of transport</li></ul>
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## SOLVED PROBLEMS

### Illustration 1

Priyanshi imported certain goods in March 2014. An 'Into Bond' Bill of Entry was presented on 14<sup>th</sup> March and goods were cleared from the port for warehousing. Assessable value was \$ 10,00,000. The Order permitting the deposit of the goods in warehouse for three months was issued on 21<sup>st</sup> March. Priyanshi did not clear the imported goods even after the warehousing period got over on 20<sup>th</sup> June. She did not obtain any extension of time as well.

A notice was issued under Section 72 demanding duty and other charges. Priyanshi cleared the goods on 28<sup>th</sup> July. Compute the amount of duty payable by Priyanshi while removing the goods on the basis of following information:

Particulars	14.03	20.06	28.07
Rate of Exchange per US \$	Rs.48.20	Rs.48.40	Rs.48.50
Basic Customs Duty	15%	10%	12%

Assume that no Additional Duty or special additional duty is payable.

#### 1. Relevant Date for Rate of Customs Duty:

- Section 15 explains that the **relevant date for goods removed under section 68** is the date on which bill of entry is filed for home consumption.
- Section 68 covers a situation where the **Bill of Entry is filed by the assessee for removal of goods warehoused**.
- However, when the goods are removed after the permissible period and based on the demand by the department under section 72, such goods **shall not be considered as goods removed under section 68**.
- Hence, Goods which are not removed from the warehouse within the permissible period are **deemed to be improperly removed on the day they ought to have been removed**. In other words, the **last date on which goods should have been removed is taken as the 'deemed date of removal'** and the relevant rate is the rate prevalent on that date.

- Relevant date for rate of exchange:** Under section 14, the relevant rate of exchange shall be that rate which is in force on the **date on which the bill of entry is presented for home consumption or warehousing**. Hence, relevant exchange rate is 1 US \$ = Rs.48.20 prevalent on 14<sup>th</sup> March, the date on which B/E for warehousing is presented.

#### 3. Computation of Customs Duty

Particulars	Value
Applicable rate of duty (refer point. No. 1 above)	10%
Relevant rate of exchange (refer point no. 2 above)	Rs.48.20 / USD
Assessable value (USD 1,00,000 x Rs.48.20)	Rs.4,82,00,000
Customs Duty @ 10%	Rs.48,20,000

<b>Add:</b> EC @ 2% and SHEC @ 1% of Customs Duty (3% of Rs.48,20,000)	Rs.1,44,600
<b>Total Duty Payable</b>	<b>Rs. 49,64,600</b>

### Illustration 2

Vipul imported certain goods in December, 2014. An 'into Bond' bill of entry was presented on 14<sup>th</sup> December 2014 and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21<sup>st</sup> December 2014. Vipul deposited the goods in the warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 20<sup>th</sup> April, 2015.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest and other charges. Vipul cleared the goods on 14<sup>th</sup> May, 2015. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of following information:

Particulars	14/12/2014	20/04/2015	14/05/2015
Rate of Exchange per US \$ (as notified by Central Board of Excise and Customs)	Rs.65.20	Rs.65.40	Rs.65.50
Basic Customs Duty	15%	10%	12%

No other customs duty is payable except basic customs duty.

### Solution

#### Computation of duty and interest payable by Vipul

Particulars	Rs.
Assessable value (US \$ 1 lakh x Rs.65.20 per US \$)	65,20,000
Rate of exchange means the rate of exchange in force on the date of presentation of bill of entry for warehousing under section 46 i.e., rate in force on 14.12.2014 viz. Rs.65.20 shall be applied)	
Customs Duty @ 10% (Rate of duty in force on date of deemed removal under section 72 viz. date of expiry of warehousing period viz. on 20.4.2015 i.e., 10% shall be applied)	6,52,000
Add: EC @ 2%	13,040
Add: SHEC @ 1%	6,520
<b>Total Customs Duty Payable</b>	<b>6,71,560</b>
<b>Computation of Interest under section 61:</b> Vipul would also be liable to pay interest under section 61 @ 15% for period beyond 90 days from date of depositing into warehouse as follows:	



Date of deposit of goods in the warehouse	21.12.2014
Period of 90 days, expires on = 21.12.2014 + 89 more days (Language used is "if such goods remain in warehouse beyond 90 days." Hence, date of deposit in warehouse is counted as first day and 89 more days are to be taken - <b>Circular no. 39/2013 - Customs, dated 1.10.2013</b> )	20.3.2015
Date of payment of duty	14.5.2015
No. of duty for which interest payable = 14.5.2015 to 20.3.2015	55 days
<b>Interest @ 15% p.a. = Duty Rs.6,71,560 × 15% p.a. × 55 days ÷ 365 days</b>	<b>15,179</b>



## 8

**CHAPTER 8: EXPORT INCENTIVES****DUTY DRAWBACK SEC 74 AND SEC 75**

- Drawback means refund of excise duty and customs duty paid on inputs to the exporter.
- Drawback provisions covered in section 74 & 75 of Customs Act
- Sec 74 is applicable when imported goods are re-exported as it is an article is easily identifiable.
- Where section 75 is deals with when imported materials & indigenous material/ Input service are used in the manufacture of goods, which are then exported,
- Drawback also will be paid when the goods supplied from DTA to SEZ.

**DIAGRAM**

8.1



## **DRAWBACK U/S 74**

SR	SITUATION	EXPLAINNATION
1	<b>Applicability</b>	When any goods a) Capable of being easily identified b) Which have been Imported into India c) Upon which duty has been paid on importation and <b>Which are entered for export</b>
2	<b>How much time allowed for export?</b>	<b>Two</b> years from the date of payment of duty on importation
3	<b>What is export?</b>	Taking goods outside India to a place outside India
4	<b>Relevant dates</b>	Date on entry for export shall be the date on which the rate of duty is calculated under section 16 In case of goods assessed to duty provisionally u/s 18 then the date of payment of the provisional duty shall be the date of payment of duty.
5	<b>Rules</b>	Re-export of Imported goods rules 1995
6	<b>Which duties eligible for drawback</b>	Duty Drawback is equal to (a) customs duty paid on imported inputs

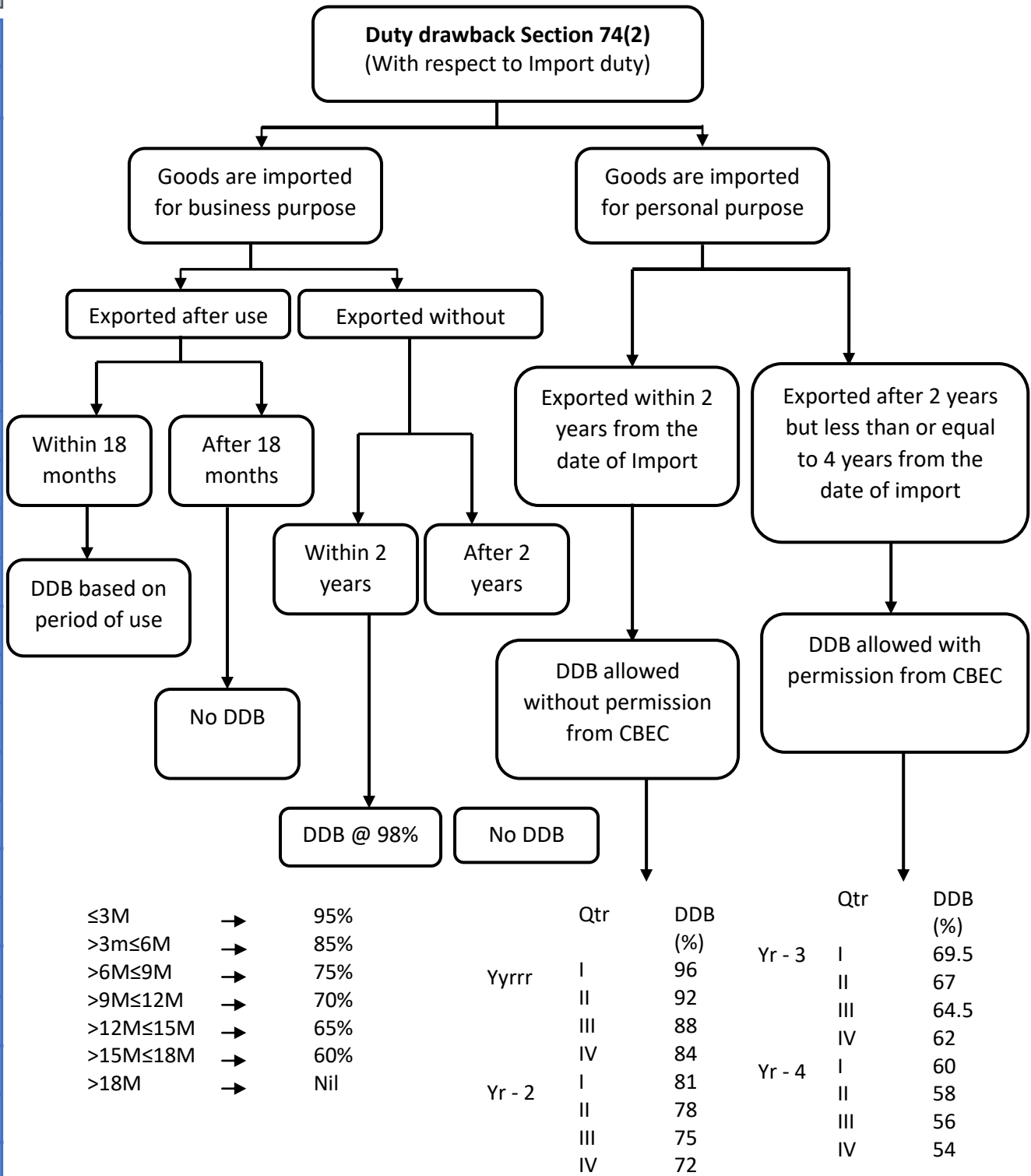
## **QUANTUM OF DRAWBACK**

Sr	Situation	Drawback
1	Re -export without use	<b>98%</b>
2	Re-export after use	
	Period between date of clearance for home consumption and date when goods are placed under custom control for export	
a)	Not more than 3 months	<b>95%</b>
b)	More than 3 months but not more than 6 month	<b>85%</b>
c)	More than 6 months but not more than 9 month	<b>75%</b>
d)	More than 9 months but not more than 12 month	<b>70%</b>
	More than 12 months but not more than 15 month	<b>65%</b>
	More than 15 months but not more than 18 month	<b>60%</b>
	More than 18 month	<b>NIL</b>
3	<b>Rate of drawback in case of goods meant for personal or private use(motor car or other goods)</b>	
	Import duty paid in respect of such goods <b>Less: 4%</b>	



	,3%, 2.5% and 2% for use of such for each quarter or part thereof during the period of first year, second year, third year and fourth year respectively	
=	<b>Drawback to be claimed</b>	
<b>Note:</b> No drawback shall be allowed if such goods used for more than 4 years.		
<b>4</b>	<b>In following cases drawback shall not be allowed</b> <ul style="list-style-type: none"><li>• Wearing apparel</li><li>• Tea-chests</li><li>• Exposed cinematograph films passed by board of film Censors in India</li><li>• Unexposed photographic films, paper and plates and X-ray films</li></ul>	

8.4





**Illustration 1**

**Calculate the amount of drawback u/s 74. [CS FINAL DECEMBER 2007]**

- a) Salman imported motor car for his personal use and paid Rs 5,00,000 as import duty. The car is re-exported after 6 months and 20 days.
- b) Nisha imported wearing apparel and paid Rs 50,000 as import duty. As she did not like the apparel these were re-exported after 20 days.
- c) Super tech Ltd imported 10 computers system paying custom duty of Rs 50lacs. Due to some technical problems the computer system were returned to foreign supplier after 2 months without using them all.

**RE-EXPORT OF IMPORTED GOODS [DRAWBACK OF CUSTOMS DUTIES]**  
**RULES, 1995**

**RULE 2 DEFINITION**

In these rules, unless the context otherwise requires,

- (a) **"Drawback"** in relation to any goods exported out of India, means the refund of duty or tax or cess as referred to in the Customs Tariff act, 1975 and paid on importation of such goods in terms of section 74 of the Customs Act,
- (b) **"Export"**, with its grammatical variations and cognate expressions means taking out of India to a place outside India and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port or airport.

**RULE 3: PROCEDURE FOR CLAIMING DRAWBACK ON GOODS EXPORTED BY POST**

- (1) Where goods are to be exported by post under a claim for drawback under these rules:
  - a. The outer packing carrying the address of the consignee shall also carry in bold letters the words 'DRAWBACK EXPORT';
  - b. The exporter shall deliver to the competent Postal Authority, alongwith the parcel or package, a claim in the form at Annexure I, in quadruplicate, duly filled in.
- (2) The date of receipt of the aforesaid claim form by the proper officer of customs from the postal authorities shall be deemed to be date of filing of drawback claim by the exporter for the purpose of section 75A and an intimation of the same shall be given by the proper officer of customs to the exporter in such form as the Commissioner of Customs may prescribed.
- (3) In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within 15 days of its receipt from postal authorities by a deficiency memo in the form prescribed

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by the Commissioner of Customs, and such claim shall be deemed not to have been received for the purpose of sub-rule (2).

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- (4) When the exporter complies with the requirements specified in the deficiency memo, within 30 days of receipt of the deficiency memo, he shall be issued an acknowledgement by the proper officer in the form prescribed by the [Commissioner of Customs] and the date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

#### **RULE 4: STATEMENTS / DECLARATIONS TO BE MADE ON EXPORTS OTHER THAN BY POST**

**In the case of exports other than by post, the exporter shall at the time of export of the goods:-**

- a. State on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export that :-
- (i) The export is being made under a claim for drawback under section 74 of the Customs Act;
- (ii) That the duties of customs were paid on the goods imported;
- (iii) That the goods imported were not taken into use after importation; OR
- (iv) That the goods were taken in use;

**Provided that** if the Commissioner of Customs is satisfied that the exporter or his authorized agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorized agent, and for reasons to be recorded, exempt such exporter or his authorized agent from the provisions of this clause.

- b. Furnish to the proper officer of customs, copy of the Bill of Entry or any other prescribed document against which goods were cleared on importation, import invoice, documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary.

#### **RULE 5: MANNER AND TIME OF CLAIMING DRAWBACK ON GOODS EXPORTED OTHER THAN BY POST**

- (1) A claim for drawback under these rules shall be filed in the form at Annexure II within 3 months from the date on which an order permitting clearance and loading of goods for exportation under Sec. 51 is made by proper officer of customs :



**Provided that** the AC or DC of customs may, if he is satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of 3 months, allow the exporter to file his claim within a further period of 3 months.

**(2) The claim shall be filed along with the following documents, namely:-**

- a. Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.
- b. Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.
- c. Import invoice.
- d. Evidence of payment of duty paid at the time of importation of the goods.
- e. Permission from Reserve Bank of India for re-export of goods, wherever necessary.
- f. Export invoice and packing list.
- g. Copy of Bill of lading or Airway bill.
- h. Any other documents as may be specified in the deficiency memo.

**(3)** The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims which are complete in all respects, and for which an acknowledgement shall be issued in such form as may be prescribed by the Commissioner of Customs.

**(4)** (a) Any claim which is incomplete in any material particulars or is without the documents specified in sub-rule (2) shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within 15 days of submission and shall be deemed not to have been filed;

(b) Where exporter complies with requirements specified in deficiency memo within 30 days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1).

**(5)** Where any order for payment of drawback is made by the Commissioner [Appeals], Central Government or any Court against an order of the proper officer of customs, the manufacturer exporter may file a claim in the manner prescribed in this rule within 3 months from the date of receipt of the order so passed by the Commissioner [Appeals], Central Government or the Court, as the case may be.

**RULE 6: PAYMENT OF DRAWBACK AND INTEREST :-**

- (1) The drawback under these rules and interest, if any, shall be paid by the officer of Customs to the exporter or to the agent specially authorized by the exporter to receive the said amount of drawback and interest.
- (2) The date of payment of drawback and interest shall be deemed to be, in case of payment :
  - c. By cheque, the date of issue of cheque; or
  - d. By credit in the exporter's account maintained with the Custom House, the date of such credit.

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**RULE 7: REPAYMENT OF ERRONEOUS OR EXCESS PAYMENT OF DRAWBACK AND INTEREST**

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by an officer of customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962.

**RULE 8A: POWER TO RELAX**

If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorized agent has, for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback, it may, after considering the representation, if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rule and allow drawback in respect of such goods.

**SECTION 75: DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURE OF EXPORTED GOOD**

It empowers the Central Government to allow a drawback on imported material used in manufacturing or processing of goods, which are exported out of India u/s. 51.

**No drawback shall be allowed in respect of any goods, if**

- (a) The export value of such goods or class of goods is **less than the value of the imported materials used** in the manufacture or processing of such goods, or
- (b) Is not more than such specified percentage of the value of the imported materials used in the manufacture or processing of such goods, or
- (c) The sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the FEMA, 1999. If drawback is already allowed, it shall be recovered.

- (1) **Drawback to be allowed :** A drawback may be allowed on the export of goods -
  - At such amount, or at such rates, as may be determined by the Central Government.
  - Subject to the provisions of the Customs and Central Excise laws / rules and these rules.
- (2) **Rate of drawback on FOB or on quantity :** Rate of drawback has been expressed as a percentage of free on board [FOB] value or rate per unit quantity of export goods. Such rates are, unless specifically stated otherwise, are inclusive of rate applicable to packing materials.
- (3) **Determining amount /rate of drawback having regard to certain parameters:** In determining amount / rate of drawback under this rule, Central Government shall have regard to :
  - a) The average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.
  - b) The average quantity or value of the imported materials or excisable materials from used for production or manufacture in India of a particular class or goods.
  - c) Average amount of duties paid on imported or excisable materials used in manufacture of semis, components and intermediate products which are sued in the manufacture of goods.
- (4) **Rates of drawback not to apply :** The rates of drawback shall not be applicable to export of a commodity or product if such commodity or product is -
  - a) Manufactured partly or wholly in a warehouse under section 65 of Customs Act, 1962;
  - b) Manufactured or exported in discharge of export obligation against any Advance Authorization or Duty Free Import Authorization issued under Duty Exemption Scheme of Foreign Trade Policy;
  - c) Manufactured or exported by any of the units situated in free trade zones or export processing zones or special economic zones;
  - d) Manufactured or exported availing the benefit of the notification no. 32/1997, dated 1-4-1997 [this notification allows exemption to goods imported for execution of an export order placed on the importer by the supplier of goods for jobbing].

**RULE 3 ALL INDUSTRY RATES**

The central government's drawback directorate fixes all industry rates, having regards to the following criteria:

- (a) The average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufacture in India;
- (b) The average quantity or value of the imported materials or excisable materials use for production or manufacture in India of a particular class of goods ;
- (c) The average amount of duties paid on imported materials or excisable materials use in the manufacture of semis, components and intermediates products which are used in the manufacture of goods ;
- (d) The average amount of duties paid on materials wasted in the process of manufacture and catalytic agent:

However, if any such waste or catalytic agents is re-used in any process of manufacture or is sold, the average amount of duties of the waste of catalytic agent re-used or sold shall also be deducted ;

- (e) The average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods ;
- (f) Any other information which the central government may consider relevant or useful for the purpose

**RULE 4 REVISIN OF RATES**

The Central Government may revise amount or rates determined under rule 3.

**RULE 5 RELEVANT DATE FOR DETERMINATION OF AIR**

In case of Goods exported by filing Shipping Bill /Bill of Export → Date of Export Order.

In case of Goods Exported by Post → Date of Delivery of Export Goods to the Postal Authority.

**RULE 6 BRAND RATE**

**(1) Cases where amount or rate of drawback has not been determined -**

**Brand Rate [Rule 6]** : Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, within 3 months from the date relevant for the applicability of the amount or rate of drawback, apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.



In case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner or Commissioner of Customs, having jurisdiction over any one of the said places of export.

**Extension of time limit for filing drawback claim and fees therefore:**

Extending authority	Period of extension, which can be allowed by the authority.	Fees payable along with the application for grant of extension.
Assistant / Deputy Commissioner of Customs	Further 3 months [beyond original period of 3 months]	<ul style="list-style-type: none"> <li>• 1% of the FOB value of exports; or</li> <li>• Rs. 1,000,</li> </ul> Whichever is less
Principal Commissioner or Commissioner of Customs	Further 6 months [beyond original period of 3 months & extension of 3 months by AC/DC]	<ul style="list-style-type: none"> <li>• 2% of the FOB value; or</li> <li>• Rs. 2,000</li> </ul> Whichever is less.

- (2) **Grant of Drawback:** The Principal Commissioner or Commissioner of Customs after making such necessary inquiries as it deems fit will fix the brand rate.
- (3) **Revocation of Drawback:** The Central Government where considers it necessary so to do, it may -
- Revoke the rate of drawback or amount of provisional drawback by the Principal Commissioner or Commissioner of Customs, as the case may be; or
  - Direct the Principal Commissioner or Commissioner of Customs, as the case may be, to withdraw the rate of drawback or amount of drawback determined.
- (4) **"Place of Export"** means customs station or any other place appointed for loading of export goods u/s. 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought. [Explanation].

**RULE 7 SPECIAL BRAND RATE**

- (1) **Cases where the amount or rate of drawback determined is low - Special Brand Rate [Rule 7] :** In case of the duty drawback as per all industry rate is less than 80% of the duties paid on the materials or components, then the exporter, except where a claim for drawback under rule 3 or rule 4 has been made, can apply for special brand rate to the





Principal Commissioner or Commissioner of Customs by furnishing the prescribed data within 3 months from the relevant date for determination of rate of duty and tariff valuation under Section 16 or 83.

Thus, if an exporter makes a claim for drawback as per All Industry Rates, he cannot apply for special brand rate.

(2) **Extension of due date of filing the application & fees therefore** : Same as provided in Rule 6.

(3) **Provisional determination of special brand rate:**

- a) Provisional drawback amount, equal to the customs component of all industry rate corresponding to the export goods, as may be specified by the Central Government will be paid by the proper officer of customs pending processing of the application for brand rate of drawback: Provisional drawback amount, as may be specified by the Central Government, shall be paid by the proper officer of Customs.
- b) Option to claim further provisional drawback : Where the exporter desires that he may be granted further drawback provisionally, he may, while making an application under rule 7(1), apply to the Commissioner of Customs in writing in this behalf in the manner as has been provided in Rule 6(2) for grant of further provisional drawback shall be considered in the manner and subject to the conditions as specified in Rule 6, subject to the condition that bond required to be executed by the claimant shall only be for the difference between amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4 by the Central Government and the provisional drawback authorized by the Commissioner of Customs under this rule.

### **Illustration 2**

**Rule 7:** An exporter exported 2,000 pairs of leather shoes @ Rs.750 per pair. All industry rate of drawback is fixed on average basis i.e. @ 11% of FOB subject to maximum of Rs.80 per pair. The exporter found that the actual duty paid on inputs was Rs. 1,95,000. He has approached you, as a consultant, to apply under Rule 7 of the drawback rules for fixation of special brand rate. Advices him suitable.

**Solution:** The relevant determination under Rule 7 of the CCE Drawback Rules, 2017 is:

(1) All Industry Rates:

- a) 11% of FOB = 11% of 2,000 pairs × 750 per pair = 1,65,000
- b) Maximum Limit = 2,000 pairs × 80 per pair = 1,60,000
- c) Drawback = Lower of (a) or (b) = 1,60,000.

(2) Actual Duty paid on inputs = 1,95,000.



- (3) Rule 7 not applies: Since AIR [1,60,000] is not less than [80% of actual 1,95,000] hence, benefit of rule 7 cannot be applied. The exporter will have to claim AIR drawback.
- (4) If actual duty is 2,05,000 : If actual duty paid on inputs is 2,05,000 then since AIR is less than 80% of actual taxes, hence, Rule 7 applies. The exporter shall not claim AIR and shall directly apply for Special Brand Rate under rule 7, in case of Rule 7, he will be provisionally paid full drawback immediately.

### **RULE 8 AND UPPER AND LOWER LIMITS OF DRAWBACK**

Upper Limit of Drawback money or rate [Rule 9] : The All Industry drawback amount or rate determined under rule 3 shall not exceed  $\frac{1}{3}^{\text{rd}}$  of the market price of the export product.

### **SECTION 75A: INTEREST ON DRAWBACK**

- (1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate 6% p.a. from the date after the expiry of the said period of one month till the date of payment of such drawback.
- (2) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made there under, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate 18% p.a. and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

**Example:** Answer the following with reference to the provisions of the Customs Act, 1962 and rules made thereunder :

- (1) Mr. A filed a claim for payment of duty drawback amounting to '50,000 on 30.07.2014. But the amount was received on 28-10-2014. You are required to calculate the amount of interest payable to Mr. A on the amount of duty drawback claimed.
- (2) Mr. X was erroneously refunded a sum of '20,000 in excess of actual drawback on 20-06-2014. The same was returned to Provide brief reasons for your answer.

**Answer:**

(1) Computation of interest payable to Mr. A on duty drawback claimed.

Particulars	
Duty drawback claimed	Rs. 50,000
No. of days of delay [31.08.2014 to 28.10.2014]	59 days
Rate of interest	6%
Quantum of interest [rounded off] $[50,000 \times 59/365 \times 6/100]$	485

**Note:** Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback [Section 75A(1) of the Customs Act, 1962].

(2) **Computation of interest chargeable from Mr. X on excess duty drawback paid:**

Particulars	
Duty drawback erroneously refunded	Rs. 20,000
No. of days of delay [21.06.2014 to 20.10.2014]	122 days
Rate of interest	18%
Quantum of interest [rounded off] $[20,000 \times 122/365 \times 18/100]$	1,203

**Notes:**

- (1) Interest is payable, by the claimant, on erroneous refund of duty drawback @ 18% per annum for the period beginning from the date of payment of such drawback to the claimant, till the date of recovery of such drawback [Section 75A(2) of the Customs Act, 1962]
- (2) It has been assumed that in the given case, a demand for recovery of the erroneous refund has been issued by the Department.

### **SECTION 76: PROHIBITION AND REGULATION IN CERTAIN CASES**

- (1) **Notwithstanding anything hereinbefore contained, no drawback shall be allowed -**
  - In respect of any goods the market-price of which is less than the amount of drawback due thereon;
  - Where the drawback due in respect of any goods is less than fifty rupees.
- (2) **If the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that**
  - Drawback shall not be allowed in respect of such goods or

- May be allowed subject to such restrictions and conditions as may be specified in the notification.

**DISTINCTION BETWEEN SECTION 74 AND 75**

DUTY DRAWBACK U/S. 74	DUTY DRAWBACK U/S. 75
(1) Goods should be easily identifiable when exported.	(1) Identity of goods may change by manufacturing or processing.
(2) Duty drawback of Import Duty is available.	(2) Duty drawback of Import Duty as well as excise duty is available.
(3) Drawback 98% is available.	(3) Drawback At AIR, Brand rate is available.
(4) It is applicable to all imported goods.	(4) There is no time limit for Re-exportation of goods.

8.15



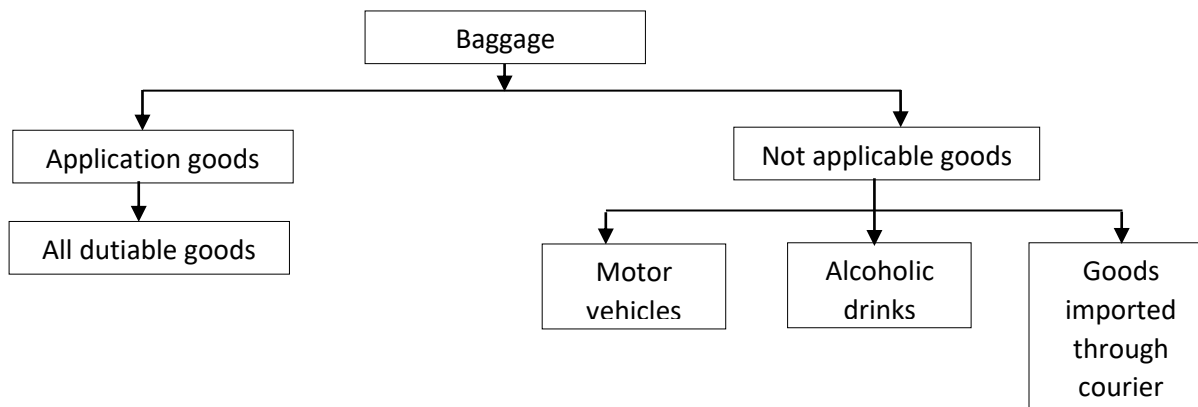
9

## BAGGAGE, POST, COURIER, STORIES AND COSTAL GOODS

### MEANING OF BAGGAGE [SECTION 2(3)]

- Baggage means all dutiable articles, imported by passenger or a member of a crew in his baggage
- Un-accompanied baggage, if dispatched previously or subsequently within prescribed period is also covered
- Baggage does not include motor vehicles, alcoholic drinks and goods imported through courier, articles imported under an import license for his own use or on behalf of others.

Basically baggage can be classifiable into the following lines:



Rate of Duty on Baggage is @ 35%.

### General prohibitions

- Currency can be taken out/ brought in only as per the specific restrictions of RBI under FEMA.
- Possession of narcotic drugs is strictly prohibited.
- Domestic pets like dogs, cats, birds can be brought as per strict health certificate regulations
- Taking out wild orchids and wild life is strictly prohibited.

<b><u>Section</u></b> <b><u>77</u></b>	<b>Declaration of Baggage</b> <b>Declaration by owner of baggage</b> The owner of any baggage shall, for the purpose of clearing it, makes a declaration of its contents to the proper officer. This is known as Baggage Declaration Form.
<b><u>Section</u></b> <b><u>78</u></b>	<b>Determination of rate of duty and tariff valuation in respect of baggage</b> The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on the <b>date on which a declaration is made in respect of such baggage under section</b>



9.2

	<b>77.</b>
<b><u>Section 79</u></b>	<p><b>Bona fide baggage</b> accompanying passenger is <b>exempt from the import duty as per section 79</b> of the Customs Act, 1962.</p> <ul style="list-style-type: none"> <li>Any articles in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules.</li> <li>Any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of such articles does not exceed such limits as may be specified in the rules.</li> </ul>
<b><u>Section 80</u></b>	<p><b>Detained Baggage</b></p> <p>A passenger may request the Customs to detain his baggage either for re-export at the time of his departure from India or for clearance subsequently on payment of duty. The detained baggage would be examined and full details will be inventoried. Such baggage is kept in the custody of the customs.</p>
<b><u>Section 81</u></b>	<p>The board may make regulations</p> <ol style="list-style-type: none"> <li>For providing for the manner of declaring the contents of any baggage</li> <li>Providing for custody, examination, assessment of duty and clearance of baggage</li> <li>Providing for transit or transshipment of baggage from one custom station to another or to place outside India.</li> </ol>

### **CLEARANCE PROCEDURE OF BAGGAGE GREEN CHANNEL**

- Passenger who has nothing to declare can simply walk through green channel with baggage on basis of oral declaration
- Declaration should be made on their disembarkation cards at time of incoming Customs Officer can also stop and check
- Any passenger found walking through green channel with dutiable or prohibited goods is liable to strict penal action of seizure and confiscation.
- He can even be arrest / prosecuted.

### **RED CHANNEL**

- Person carrying dutiable goods should pass through red channel and should submit declaration.
- The declaration of goods and value as given by passenger in disembarkation card is generally accepted, but customs officer can inspect baggage.

**BAGGAGE RULES, 2016****RULE 2**

- (1) **Resident [Rule 2(iv)]**: "Resident" means a person holding a valid passport issued under the passports Act, 1967 and normally residing in India.
- (2) **Infant [Rule 2(iii)]**: "Infant" means a child not more than two years of age.
- (3) **Tourist [Rule 2(v)]**: "Tourist" Means a person not normally resident in India, who enters India for a stay of not more than 6 months in the course of any 12 months period for legitimate non-immigrant purposes;
- (4) **Personal effects [Rule 2(vi)]**: "Personal effects" means things required for satisfying daily necessities but does not include jewellery.
- (5) **Pooling not permissible**: The General Free Allowance (GFA) of a passenger under this rule shall not be allowed to be pooled with the free allowance of any other passenger.

**RULE 3 AND 4**

1. **General duty free baggage allowance**: The general duty free baggage allowance for different class of passengers coming from different countries is given hereunder:

Rule No	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
3	a. Indian resident or b. Foreigner residing in India or c. Tourist of Indian origin. Excluding an infant	Any country other than Nepal, Bhutan or Myanmar	a. Used personal effects and travel souvenirs; and b. Articles up to the value of Rs. 50,000 (excluding articles mentioned in Annexure I), if carried on in the accompanied baggage of the passenger
3	a. Tourist of foreign origin Excluding infant	Any country other than Nepal, Bhutan or Myanmar	a. Used personal effects and travel souvenirs; and b. Articles up to the value of 15,000 (excluding articles mentioned in Annexure I), if carried on in person on in the





			accompanied baggage of the passengers
4	a. Indian resident or b. Foreigner resident in India or c. Tourist, Excluding an infant	Nepal, Bhutan or Myanmar	a. Used personal effects and travel souvenirs; and b. Articles up to the value of 15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger On arriving by land: Only used personal effects.

**Notes**

When a passenger is an infant, only used personal effects will be allowed duty free.

The general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

**ANNEXURE – I**

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 Gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/ Light - Emitting Diode/ Plasma) television.

**Illustration 1**

**Duty liability – India resident:** Mr. B an Indian resident, aged 30 years, returned to India on 10/04/2016 after visiting England. He had been to England on 01/04/2016. On his way back to India he brought following goods with him,-

- (1) Personal effects like cloths etc. Valued at Rs. 1,00,000
- (2) 1 Litre of Wine worth Rs. 15,000
- (3) A digital camera worth Rs. 55,000
- (4) A mobile worth Rs. 25,000

What is the customs duty payable?

**Solution**

AN Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage,-

- (a) Used personal effects, travel souvenirs; and
- (b) Articles other than those mentioned in Annexure I, upto the value of Rs. 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

**Computation of Custom duty payable by Mr. B (Amount in Rs) -**

(1) Personal effects like clothes etc.	NIL
(2) Wine (upto 2 liter can be accommodated in General Free Allowance	15,000
(3) Digital camera	55,000
(4) Mobile	25,000
Total Dutiable goods Imported	95,000
<b>Less:</b> general Free Allowance under Rule 3	50,000
<b>Balance goods on which duty is payable</b>	45,000
<b>Custom Duty Payable @ 38.5%</b>	17,325

**Illustration 2**

Duty liability - Tourist of Indian origin: Mrs. A, a person of Indian origin, aged 40 years came to India on tour along with her baby aged  $1\frac{1}{2}$  years. She carried with her following goods:

- (1) Personal effects like clothes of Mrs. A valued at Rs. 40,000
- (2) Used personal effects of infant at Rs. 60,000
- (3) Laptop worth Rs. 65,000
- (4) Travel souvenirs valued at Rs. 25,000
- (5) 1 Litre wine worth Rs. 5,000
- (6) Mobile worth Rs. 20,000
- (7) Digital Camera Rs. 60,000
- (8) Cigars 20 worth Rs. 1,340

What is the customs duty payable?

**Solution**

Computation of Customs Duty payable by Mrs. A (Amount in Rs):

(1) Personal effects like clothes of Mrs. A	Exempt
(2) Used personal Effects of infant	Exempt
(3) Laptop	Exempt
(4) Travel Souvenirs	Exempt



(5) Wine (upto 2 litres can be accommodated in GFA)	1,340
(6) Mobile	20,000
(7) Digital camera	60,000
(8) Cigars (upto 25 nos. Can be accommodated in GFA)	1,340
<b>Total dutiable goods imported (that can be accommodated in GFA)</b>	<b>86,340</b>
<b>Less: General Free Allowance under Rule 3</b>	<b>50,000</b>
<b>Balance goods on which duty is payable</b>	<b>36,340</b>
<b>Custom duty payable @ 38.5%</b>	<b>13,991</b>

**Illustration 3**

Duty liability - Tourist of foreign origin: Mr. Fang a tourist of Chinese origin aged 22 years came to India on tourist visa for a period of 1 month on 1/4/16 along with his wife aged 20 years and child Jing aged 2 years. He brought the following items along with him:

- (1) Personal effects like cloths of Mr. Fang valued at Rs. 40,000, of Mrs. Fang valued at Rs. 50,000 and of the Jing worth Rs. 25,000
  - (2) 2 laptop computers worth Rs. 36,000 each.
  - (3) 3 bottles of wine of 1 liter each of total value of Rs. 6,000
  - (4) Digital camera worth Rs. 11,000
  - (5) Mobile worth Rs. 15,000
- What is the customs duty payable?

**Solution****Computations of customs duty payable by Mr. Fang (Amount in Rs):**

Particulars	Mr. Fang
(1) Personal effects	Exempt
(2) 1 laptop computer	Exempt
(3) 2 bottles of wine (Wine upto 2 litres can be accommodated in the GFA) (Rs. 6,000 ÷ 3 × 2) [WN - 1]	4,000
(4) Digital camera	11,000
<b>Total dutiable goods imported</b>	<b>15,000</b>
<b>Less: General fee allowance under Rule 3</b>	<b>15,000</b>
Balance goods on which duty is payable	<b>NIL</b>
Customs duty payable	<b>NIL</b>

**Computations of customs duty payable by Mrs. Fang (Amount in Rs):**

Particulars	Mrs. Fang
(1) Personal effects	Exempt
(2) 1 laptop computer	Exempt
(3) 2 bottles of wine (Wine upto 2 litres can be accommodated in	2,000

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the GFA) (Rs. 6,000 ÷ 3 × 2) [WN - 1]		
(4) Mobile		15,000
<b>Total dutiable goods imported</b>		<b>17,000</b>
<b>Less:</b> General free allowance under Rule 3		15,000
<b>Balance Goods on which duty is payable</b>		<b>2,000</b>
<b>Customs duty payable @ 38.5%</b>		<b>770</b>

**Computation of customs duty payable in respects of the Child Jing (Amount in Rs):**

Particulars	Jing
Used personal effects	Exempt
Total value of dutiable goods	NIL
Customs duty payable	NIL

**Working Notes:**

- (1) Since only 2 liters of wine can be accommodated in General Free Allowance, therefore, 2 liters is cleared in the baggage of Mr. Fang and 1 liter in the baggage of Mrs. Fang.
- (2) The free allowance of 1 passenger cannot be pooled with that of other.
- (3) For infants only used personal effects shall be allowed duty free. It has been assumed that Mrs. & Mr. Fang and child Jing have brought three separate baggage's for which separate declaration have been given to lower the incidence of customs duty.

**RULE 5: DUTY FREE ALLOWANCE IN RESPECT OF JEWELLERY.**

A passenger returning to India shall be allowed clearance free of duty jewellery in his bona fide baggage to the extent as given below:

Passenger who has been residing abroad for over one year	<ul style="list-style-type: none"> <li>For a gentleman passenger: Jewellery upto a weight, of 20 grams with a value cap of Rs. 50,000.</li> <li>For a lady passenger: Jewellery upto a weight, of 40 grams with a value cap of Rs. 1,00,000</li> </ul>
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**Illustration 4**

Compute duty liability in respect of jewellery in independent cases if the passenger was resident abroad for over one year before his return to India on 10/04/2010

Name of passenger	Weight of jewellery	Value of jewellery (Rs)
Mr. A	18 grams	52,000
Mr. B	22 grams	44,000
Mr. C	20 grams	50,000
Mr. D	25 grams	75,000



Miss P	38 grams	1,12,000
Miss Q	45 grams	90,000
Miss R	45 grams	1,12,000
Miss S	50 grams	1,50,000

**Solution**

A passenger residing abroad for more than one year, on return to India, Shall be allowed clearance free of duty on his bona fide baggage of jewellery upto a weight, of 20 grams with a value cap of Rs. 50,000 if brought by a gentleman passenger, or forty grams with a value cap of Rs. 1,00,000 if brought by a lady passenger. Hence, the duty liability will be computed as under:

Name of passenger	Weight of jewellery (in grams)	Value of jewellery (Rs)	Duty free allowance	Assessable value	Duty liability @ 38.5%	Remarks
Mr. A	18	52,000	50,000	2,000	770	Value cap of Rs. 50,000 value shall be imposed.
Mr. B	22	44,000	40,00	4,000	1,540	Quantity cap of 20 grams shall be imposed. Hence, duty free allowance shall be (Rs. 44,000 ÷ 22) × 20 = Rs. 40,000
Mr. C	20	50,000	50,000	-	-	Jewellery is within duty free allowance of quantity as well as

						monetary cap.
Mr. D	25	75,000	50,000	25,000	9,625	Quantity cap of 20 grams value is 60,000. Hence, value cap of Rs. 50,000 shall be imposed.
Miss P	38	1,12,500	1,00,000	12,500	4,813	Value cap of Rs. 1,00,000 shall be imposed
Miss Q	45	90,000	80,000	10,000	3,850	Quantity cap of 40 grams shall be imposed. Hence, duty free allowance shall be (Rs. 90,000 ÷ 45,000) × 40 = Rs. 80,000
Miss R	45	1,12,500	1,00,000	12,500	4,813	Quantity cap of 40 grams - value is Rs. 1,00,000
Miss S	50	1,50,000	1,00,000	50,000	19,250	Quantity cap of 40 grams - value is Rs. 1,20,000.



						Hence, value cap of Rs. 1,00,000 shall be imposed.
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9.10

### **RULE 6: TRANSFER OF RESIDENCE**

- (1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bona fide baggage to the extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.
- (2) The conditions mentioned in column (3) of the said appendix may be relaxed to the extent mentioned in column (4) of the said Appendix.

### **APPENDIX**

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From 3 months upto 6 months	Personal and household articles, other than those mentioned in Annexure I or II but including articles mentioned in Annexure III upto an aggregate value of Rs. 60,000.	Indian passenger	-
From 6 months upto 1 year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto	Indian passenger	-



	an aggregate value of Rs. 1,00,000		
Minimum stay of 1 year during the preceding 2 years.	Personal and household articles, other than those listed in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 2,00,000	The Indian passenger should not have availed this concession in the preceding 3 years.	-
Minimum stay of 2 years or more.	Personal and household articles, other than those listed in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 5,00,000	(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence;	Shortfall of upto 2 months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if he early return is on account of: - (i) Terminal leave or vacation being availed of by the passenger; or (ii) Any other special circumstances for reasons to be recorded in writing.
		(ii) Total stay in India on short visit during the 2 preceding years should not exceed 6 months; and	The principal commissioner of customs or commissioner of customs may condone short visit in excess of 6 months in special circumstances for reasons to be recorded in writing.
		(iii) Passenger has not availed this concession in	No relaxation

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your  
notes



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	the preceding 3 years.	

9.12

**ANNEXURE – II**

1. Colour Television.
2. Cartridges of fire arms exceeding 50.
3. Dish Washer.
4. Domestic refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such video camera with one or more of the following goods, namely:
  - (a) Television receiver;
  - (b) Sound recording or reproducing apparatus;
  - (c) Video reproducing apparatus.
7. Cinematographic films of 35mm and above.
8. Gold or Silver, in any form, other than ornaments.

**ANNEXURE III**

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disk player.
3. Music System.
4. Air-Conditioner.
5. Microwave oven.
6. Word processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or liquefied Petroleum Gas Cooking Range.
11. Personal Computer (Desktop Computer).
12. Laptop Computer (Note Book Computer).
13. Domestic refrigerators of capacity up to 300 litres or its equivalent.

9.13

**Illustration 5**

Mr. Ram, an Indian resident and an engineer by profession who was engaged in his profession in USA for 9 months, brought with him on 10/04/2016 the following used items on his return to India:

- (1) Used personal effects like clothes etc. of Rs. 1,00,000
- (2) Digital Video Disc player of Rs. 5,000
- (3) Music System of Rs. 55,000
- (4) Air - Conditioner of Rs. 45,000
- (5) Microwave Oven of Rs. 28,000
- (6) Fax Machine of Rs. 52,000
- (7) Domestic Refrigeration of capacity of 285 litres of Rs. 1,20,000
- (8) Jewellery (18 grams) of Rs. 75,000

Calculate the custom duty payable by him

**Solution**

Duty free allowances allowed to Mr. Ram are as follows -

- (a) Under Rule 3, goods eligible for General free allowance are:
  - (i) Used personal effects (excluding jewellery); and
  - (ii) Other articles (other than those mentioned in Annexure I) upto Rs. 50,000.
- (b) Under Rule 6, Duty free allowance of used personal and household articles, other than those mentioned in Annexure I on Annexure II but including articles mentioned in Annexure III, upto an aggregate value of Rs. 1,00,000.

No duty free allowance in case of jewellery of Rs. 50,000 will be available, since he was not residing abroad for more than one year prior to his return to India.

Computation of customs duty payable by Mr. Ram (Amount in Rs)

(1) Used personal effects like clothes etc.	Nil
(2) Digital video disc player	5,000
(3) Music system	55,000
(4) Air-conditioner	45,000
(5) Microwave Oven	28,000
(6) Fax Machine	52,000
(7) Domestic Refrigeration	1,20,000
(8) Jewellery (18 grams)	75,000
<b>Total dutiable goods imported</b>	<b>3,80,000</b>
<b>Less:</b> total allowance [(i.e. Rs. 50,000 (GFA) + Rs. 1,00,000 (Transfer of residence))]	1,50,000
<b>Value of goods on which duty is payable</b>	<b>2,30,000</b>
<b>Customs duty @ 38.5% (inclusive of EC and SHEC)</b>	<b>88,550</b>

**RULE 7: CURRENCY**

The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management [Export and Import of Currency] Regulations, 2015 and the notifications issued thereunder.

**RULE 8: PROVISIONS REGARDING UNACCOMPANIED BAGGAGE**

The provisions of free allowances given under Baggage Rules, 2016 shall be applicable to 'unaccompanied baggage' if,-

- (1) The said unaccompanied baggage had been in the possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India or within such further period as the Deputy Commissioner of Customs or Assistant Commissioner may allow.
- (2) The said accompanied baggage may land in India upto 2 months before the arrivals of the passenger or within such period, not exceeding 1 year, as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of two months due to circumstances beyond his control, such as -
  - Sudden illness of the passenger or a member of his family, or
  - Natural calamities, or
  - Disturbed conditions, or
  - Disruption of the transport or travel arrangements in the country or countries concerned, or
  - Any other reasons,

**Note:** "Family" includes all persons who are residing in the same house and form part of the same domestic establishment;

**RULE 9: APPLICABILITY OF BAGGAGE RULES TO MEMBER OF CREW**

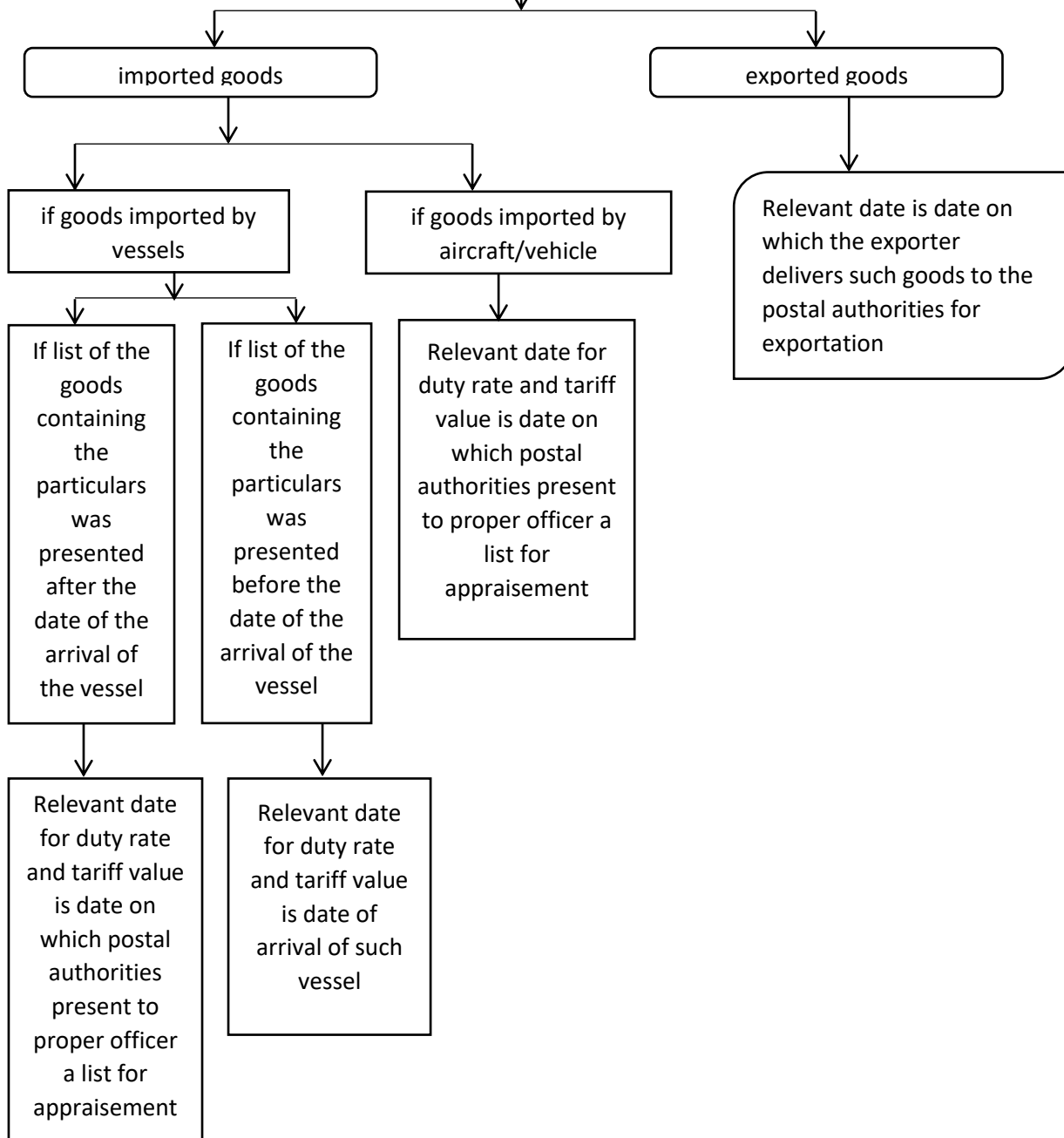
These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation for their baggage at the time of final pay off on termination of their engagement.

A member of crew of a vessel or an aircraft other than those referred above, shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of Rs. 1,500.

9.15


**PROVISIONS FOR IMPORT/EXPORT BY POST [SECTIONS 82 TO 84]**

Sec.	Provision
83	<p><b>Rate of duty and tariff valuation in respect of goods imported or Exported by post:</b></p> <p>The provisions relating to the date for determination of rate of duty and tariff valuation in case of goods imported or exported by post or courier under section 83 are as follows,;-</p> <p>(a) for goods imported by post:- the rate of duty and tariff value, if any applicable to any goods imported by post shall be the rate and valuation in force on the date on which the postal authorities or the authorised courier present to the proper officer a list containing the particular of such goods for the purpose of assessing the duty thereon:</p> <p>However, if such goods are imported by a vessel and the list was presented before the date of the arrival of the vessel, then it shall be deemed to have been presented on the date of such arrival.</p> <p>(b) for goods exported by post: the rate of duty and tariff value , if any, applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorised courier for exportation.</p>
84	<p><b>Regulations regarding goods imported or to be exported by post :</b></p> <p>The Board may make regulations providing for -</p> <p>(a) The form and manner in which an entry may be made in respect of any specified class of goods imported or to be exported by post, other than goods which are accompanied by a label or declaration containing the description, quantity and value thereof;</p> <p>(b) The examination, assessment to duty, and clearance of goods imported or to be exported by post;</p> <p>(c) The transit or transshipment of goods imported by post, from one customs station to another or to a place outside India.</p>

**RELEVANT DATE FOR DUTY RATE & TARRIF VALUE FOR POST OR  
COURIER**

9.17




**STORES-CONCESSIONS, EXEMPTIONS, DRAWBACK [SECTIONS 85 TO 90]**

9.18

Sec.	Provision
85	<b>Stores may be allowed to be warehoused without assessment to duty:</b> Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty under this Chapter, the proper officer may permit the goods to be warehoused without the goods being assessed to duty.
86	<b>Transit and transshipment of stores:</b> (1) Any stores imported in a vessels or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India. (2) Any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided u/s/ 87 or 90.
87	<b>Imported stores may be consumed on board a foreign-going vessel or aircraft:</b> Any imported stores on board a vessel or aircraft- <ul style="list-style-type: none"> <li>• (other than stores to which section 90 applies)</li> <li>• may, without payment of duty,</li> <li>• be consumed thereon as stores</li> <li>• During the period such vessel or aircraft is a foreign-going vessel or aircraft.</li> </ul>
88	<b>Application of section 69 (export of warehoused goods) and Chapter X (Drawback) to stores:</b> The provisions of section 69 and Chapter X (Drawback) shall apply to stores (other than those to which section 90 applies), subject to the modifications that - (a) export means goods "taken on board any foreign-going vessel or aircraft as stores": (b) 100% drawback shall be allowed on fuel and lubricating oil taken on board any foreign-going aircraft as stored (instead of normal 98%)
89	<b>Stores to be free of export duty: Goods -</b> <ul style="list-style-type: none"> <li>• produced or manufactured in India and</li> <li>• required as stores on any foreign-going vessel or aircraft</li> </ul> may be exported free of duty in such quantities as the proper officer may determine, having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart.
90	<b>Concessions in respect of imported stores for the Navy:</b> (1) Applicability : This section applies to - (a) Stores for the use of a ship of the Indian Navy; (b) Stores supplied free by the Government for the use of the crew of ship of the Indian Navy in accordance with their conditions of



	service.
(2)	Such Imported stores may, without payment of duty, be consumed on board a ship of the Indian Navy.
(3)	The provisions of section 69 and Chapter X (Drawback) shall apply to such stores, subject to the modifications that -
(a)	export means goods "taken on board any foreign-going vessel or aircraft as stores";
(b)	100% drawback shall be allowed on fuel and lubricating oil taken on board any foreign-going aircraft as stores (instead of normal 98%)

9.19

### **COASTAL GOODS**

- Coastal goods means goods transported from one port in India to another port in India,
- Coastal goods do not include imported goods.
- No export or import is involved, but Control is necessary to ensure that coastal goods are not illegally diverted for export. Coastal goods can leave only after obtaining written order from Customs Officer

### **SECTION 91: CHAPTER NOT TO APPLY TO BAGGAGE AND STORES**

The Provisions of this Chapter shall apply to baggage and stores.

### **SECTION 92: ENTRY OF COSTAL GOODS**

The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a **bill of coastal goods** shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

### **SECTION 93: COSTAL GOODS NOT TO BE LOADED UNTIL BILL RELATING THERETO IS PASSED**

The master of vessel shall not permit the loading of any costal goods on the vessel until a bill relating to such goods presenting under section 92 **has been passes by the officer** and has delivered to the master by the consignor.

### **SECTION 94: CLEARANCE OF COASTAL GOODS AT DESTINATION**

1. The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the **proper officer of that port all bills relating to the goods which are to be unloaded at that port.**
2. Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is that they are entered in a bill of coastal goods delivered to him under sub-section (1).

**SECTION 95: MASTER OF A COASTING VESSEL TO CARRY AN  
ADVICE BOOK**

1. The master of every vessel carrying coastal goods shall be supplied by the customs authorities with a book to be called the "advice book"
2. The proper officer at each port of call by such vessel shall **make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port.**
3. The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection.

**SECTION 96: LOADING AND UNLOADING OF COASTAL GOODS AT  
CUSTOMS PORT OR COASTAL PORT ONLY**

No coastal goods shall be loaded onto or unloaded from, any vessel at any other than a customs port or a coastal port appointed under section 7 for the loading or unloading of such goods.

**SECTION 97: NO COASTAL VESSEL TO LEAVE WITHOUT WRITTEN  
ORDER**

1. The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such **port until a written order to that effect has been given by the proper officer.**
2. No such order shall be given until -
  - a) The master of the vessel has **answered the questions** put to him under section 38;
  - b) **All charges and penalties due in respect of that vessel** or from the master thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;
  - c) The master of the vessel has satisfied the proper officer **that no penalty is leviable on him** under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;
  - d) The provisions of this chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with.

9.20

**SECTION 98: APPLICATIONS OF CERTAIN PROVISIONS OF THIS ACT TO COASTAL GOODS**

1. Sections 33, 34 and 36 shall, so far as may be, apply to coastal goods as they apply to imported goods or exports goods.
2. Sections 37 and 38 shall, so far as may be, apply to vessel carrying coastal they apply vessel carrying imported goods or export goods.
3. The central government may, by notification in the official gazette, direct that all or any of the other coastal provisions of chapter VI and the provisions of section 45 shall apply to coastal to such exceptions and modifications as may be specified in the notification.

9.21



10

# AUDIT

## AUDIT

The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this act either in his office or in the premises of the auditee in such manner as may be prescribed.

**Explanation: --** for the purpose of this section "auditee" means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

## CUSTOM AUDIT REGULATIONS, 2018 (N/H 45/2018- CUSTOM [N.T.]

**Definitions: -** "Audit" includes examination or verification of declaration record, entry, document. Import or export licence, authorization, scrip, certificate, permission, etc. book of account, testy or analysis, report, and any other document relating to imported goods or exports goods or dutiable goods, and may include inspection of sample and goods are available and where necessary, drawl of samples.

"Auditee" means a person who is subject to an audit under section 99 A of the act and includes an importer and exporter or custodian approved under section 45 licensee of a warehouse and any other person concerned directly and indirectly clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

"Audit report" includes the audit finding in the report prepared after the audit containing details about objections raised by the proper officer and explanation given by the auditee, if any

"Books of account" includes ledgers, day-book, cash books, account books, other accounts related record whether kelt in written or printed form or stored electronically.

"Electronic record "means date or record stored in any form and manner relevant for the purpose of audit under section 99A of the act.

"Premises" include the register office, branch office, warehouse, factory, or any other premises at which imported goods or exports goods or dutiable goods or books of account or record of transaction or other related documents, in relation to the said goods are ordinarily kept for any purpose by an auditee.

10.1

**AUDITEE TO PRESERVE AND MAKE AVAILABLE RELEVANT DOCUMENTS**

10.2

- a) Auditee shall preserve and make available in a timely manner, for audit,  
True and correct information,  
Records including electronic records,  
Documents or accounts  
Maintained in compliance of the provisions of Act,  
Maintained for a minimum period of five year in relation to import goods or exports goods or dutiable goods,
- b) The auditee shall render assistance and shall in no case refuse and abstract the proper officer or his team of officer in discharge of their official duty.

**Selection for audit**

The selection of auditee is based on risk evaluation though appropriate selectively criteria

**Manner of conducting audit**

- a) The proper officer may conduct audit either in his office or in certain cases at the premises of an auditee,
- b) the proper may request the auditee to furnish documents, information or record including electronic record, as may be relevant to audit,
- c) The proper officer shall give not less than fifteen days advance notice to the auditee to conduct audit the premises of the auditee,
- d) the proper office may where considered necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to product sample, if available, with him,
- e) The proper officer shall inform the auditee of the objection, if any before preparing the audit report to provide him an opportunity to offer clarification with supporting documents.
- f) Where the auditee is in agreement with the audit finding, he may make voluntary payments shall record the same in the audit report.
- g) Where the proper officer has asked the auditee to furnished information, documents record or sample for the purpose of audit, it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.
- h) The proper officer shall complete audit in cases where it is conducted of the premises of the auditee within 30 days from the date of starting of the audit.
- Provided that the jurisdictional commissioner of customs may extend the period of completion of audit from thirty days to sixty days, by an order in writing.

**Assistance of Professionals**

If the proper officer having regard to the nature and complexity of the audit,

Is of the opinion that the audit has to be done

With the assistance of a professional or expert

May do so, with the previous approval of the principal commissioner of customs.

**Assistance of Professionals**

Any auditee, who contravenes, shall be liable to the penalty which may extend to fifty thousand Indian rupees.

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## 11

## CHAPTER 11: EXEMPTION REFUNDS &amp; RECOVERIES

**SECTION 25 POWER OF GRANT EXEMPTION FROM DUTY. –**

- (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.
- (2) If the Central Government is satisfied that it is necessary in the public interest so to do, may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.
- (2A) If the Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issue under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.]
- (3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods as a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

**Explanation.** – "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

- (4) Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on that date of its issue by the Central Government for publication in the Official Gazette.

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(5) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

### SECTION 26: REFUND OF EXPORT DUTY IN CERTAIN CASES

Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if:

- a. The goods are **returned** to the exporter **otherwise than by way of re - sale**.
- b. The goods **are re - imported within 1 years** from the date of exportation, and
- c. An application for refund is filed before the expiry of **6 months** from the date of an order for the clearance of goods.

### SECTION 26A: REFUND OF DUTY FOR DEFECTIVE GOODS

Where on importation of goods, any duty has been paid on clearance of such goods for home consumption such duty shall be refunded to the person by whom it was paid, if

- a. The goods are found to be defective or not in conformity with the specifications agreed upon between the importer and supplier of the goods. Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non - conformity with specifications.
- b. The goods are satisfied to the satisfaction of the AC or DC as the goods which were imported.
- c. The importer does not claim drawback and
  - i) The goods are exported or
  - ii) Importer relinquishes his title to the goods and abandons them or
  - iii) Such goods are destroyed or rendered commercially valueless in the presence of the proper officer.

Within a period of 30 days from the date on which order for home consumption was made. The period of 30 days may be extended by Commissioner for a period not exceeding 3 months.

- d. No refund shall not be allowed if any offence has been committed.
- e. An application for refund shall be made before the **expiry of 6 months** from the relevant date as below:

If goods are exported out of India	Date on which proper officer makes an order permitting clearance and loading of goods for exportation
Title to goods is relinquished	Date of relinquishment
If goods are destroyed or	The date of such destruction or rendering of



rendered valueless.	commercially	goods valueless
------------------------	--------------	-----------------

- f. No refund shall be allowed in respect of perishable goods or goods which have exceed their shelf life.
- g. CBEC may specify conditions subject to which refund shall be allowed.

## SECTION 27. CLAIM FOR REFUND OF DUTY

(1) Any person claiming refund of any or interest, -

- a) Paid by him; or
- b) Borne by him

May make an application in such form and manner as may be prescribed for such refund to the AC or DC of Customs, **before the expiry of one year, from the date of payment of such duty or interest:**

*Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest.*

*Provided also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.*

**Explanation.** - For the purpose of this sub-section, "the date of payment of duty or interest"" in relation to a person, another than the importer, shall be constructed as "the date of purchase of goods" by such person.

(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

**(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely: -**

- i. In the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;
- ii. Where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;
- iii. Where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final

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assessment thereof or in case of re-assessment, from the date of such re-assessment.

- (2) If, on receipt of any such application, the AC or DC of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the fund:

Provided that the amount of (duty and interest, if any, paid on such duty as determined by the AC or DC of Customs under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

- a) The duty and interest, if any, paid on such duty paid] by the importer, or the exporter, as the case may be if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- b) The duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- c) The duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- d) The export duty as specified in section 26;
- e) Drawback of duty payable under sections 74 and 75;
- f) The duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification may, by notification in the Official Gazette, specify;
- g) The duty paid in excess by the importer before an order permitting clearances of goods for home consumption is made where -
  - (i) Such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
  - (ii) The duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

- (3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal, National Tax Tribunal or any Court or in any other provisions of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and , if it is not sitting, within seven days of its reassembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which he notification is so laid before the House of the People and if parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the central Government at any time by notification in the Official Gazette.

## SECTION 27A. INTEREST ON DELAYED REFUNDS

If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section (1) of that section, there shall be paid to that applicant interest at such rate, now below 5% and not exceeding 30% per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date of immediately **after the expiry of three months from the date of receipt of such application till the date of refund of such duty:**

Provided that where and duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

### Present Rate 6%

**Explanation.** - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court against an order of the AC or DC of Customs under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax tribunal or as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.



**SECTION 28. RECOVERY OF DUTIES NOT LEVIED OR NOT PAID OR SHORT-LEVIED OR SHORT-PAID OR ERRONEOUSLY REFUNDED,**

Particular	1	2
Cases	<p>1) cases other than collusion, willfull-misstatement etc.</p> <p>Where any duty payable:</p> <ul style="list-style-type: none"> <li>• Has not been levied</li> <li>• Has not been paid</li> <li>• Has been short levied</li> <li>• Has been short paid</li> <li>• Has been erroneously</li> </ul> <p>For any reason other than the reason of:</p> <ul style="list-style-type: none"> <li>• Collusion</li> <li>• Any willful misstatement</li> <li>• Suppression of facts</li> </ul>	<p>2) case of collusion, wilful- misstatement etc.</p> <p>Where any duty payable:</p> <ul style="list-style-type: none"> <li>• Has not been levied</li> <li>• Has not been paid</li> <li>• Has been short-levied</li> <li>• Has been short paid</li> <li>• Has been erroneously refunded</li> </ul> <p>By reason of:</p> <ul style="list-style-type: none"> <li>• Collusion</li> <li>• Any willful misstatement</li> <li>• Suppression of facts</li> </ul>
Period of serving of SCN	<p>The proper officer shall within two years from the relevant date, serve notice on the person chargeable with the duty or interest requiring him to show cause why he should not pay the amount specified in the notice</p> <p>Provided that before issuing notice the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed</p>	<p>The proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest requiring him to show cause why he should not pay the amount specified in the notice</p>
	<p>The person chargeable with the duty or interest, may pay before service of SCN on the basis of-</p> <ol style="list-style-type: none"> <li>1) his own ascertainment of such duty or</li> <li>2) the duty ascertained by the proper</li> </ol>	<p>Voluntary payment before SCN is not available but after SCN person can make the payment voluntarily.</p> <p>The importer or exporter, to whom a notice has been served</p>



Voluntary payment before SCN	<p>officer,</p> <p>The amount of duty along with the interest.</p> <p>Such payment inform in writing to proper officer and he,</p> <p>Shall not serve any SCN for such payment and penalty</p> <p>Note:- proper office shall not serve SCN where amount is less than Rs. 100</p>	<p>under sub- section 4 by the proper officer,</p> <p>Such person may pay</p> <ul style="list-style-type: none"> <li>the duty in full or in part, as may be accepted by him and</li> <li>the interest @ 15% p.a</li> <li>the penalty equal to 15% of the duty specified in the notice or the duty so accepted by that person within 30 days of the receipt of the notice and inform the proper officer of such payment in writing.</li> </ul>
If voluntary payment is short	<p>Where the proper officer is of the opinion that the amount voluntarily paid falls short of the amount actually payable, then, he shall process to issue the notice in respect of such amount which fall short of the amount actually payable and the period of TWO YEARS shall be compute from the date of receipt of information of payment.</p>	<p>That the duty with interest and penalty that has been paid voluntarily after SCN falls short of the amount actually payable than the proper officer shall processed to issue the notice in respect of such amount which fall short of the amount actually payable and the period of TWO YEARS shall be compute from the date of receipt of information of payment.</p>
Demand order (if SCN is issue)	<p>Proper officer shall, after allowing the concerned person on opportunity of being heard and after considering the representation and shall determine the amount of duty within a period of</p>	<p>Proper officer shall, after allowing the concerned person on opportunity of being heard and after considering the representation and shall determine the amount of duty within a period of</p>





	<p>SIX MONTH from the date of notice. Provided that officer senior in rank to the proper officer may extent further period of SIX MONTH</p>	<p>ONE YEAR from the date of notice. Provided that officer senior in rank to the proper officer may extent further period of ONE YEAR</p>
11.8	<p>Where the proper officer is unable to determine the amount of duty or interest for the reason that-</p> <ul style="list-style-type: none"> <li>(a) an appeal in a similar matter of the same person or any other person is pending before the appellate tribunal or high court or the supreme court; or</li> <li>(b) an interim order of stay has been issued by the appellate tribunal or high court or the supreme court; or</li> <li>(c) the board has, in a similar matter, issued specific direction or order to keep such matter pending; or</li> <li>(d) the settlement commission has admitted an application made by the person concerned</li> </ul> <p>The proper officer shall inform the person concerned the reason for non-determination of the amount on duty or interest shall apply not from the date of notice, but from the date of such reason ceases to exit.</p>	
interest	<p>Mandatory interest 15% p.a. It shall be calculated from the date on which such duty becomes up due up to the date of actually payment. No interest is payable if it is payable consequent to board circular and paid within 45 days without reserving right up appeal.</p>	<p>Mandatory interest 15% p.a. It shall be calculated from the date on which such duty becomes up due up to the date of actually payment. No interest is payable if it is payable consequent to board circular and paid within 45 days without reserving right up appeal.</p>
	<p>No penalty</p>	<p>Person shall be liable to pay penalty equivalent to duty or interest so determined. But if duty interest and penalty is paid within 30 days of D.O. then penalty payable shall reduce to</p>

Penalty	25% of duty or interest. Provides also that in case where duty or interest determined to payable is increased by commissioner, appellate tribunal or the court than the benefit of reduce penalty available if the amount of duty or interest so increased, along with interest payable thereon, and 25% of the consequential increase in penalty have also been paid within 30 days of communication of order.
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### Relevant date under customs

Situations	Relevant Date
1. Where the duty is not levied or not paid or short levied or short paid or interest is not charged.	Date on which the proper officer makes an order from the clearance of goods.
2. Duty of customs is provisionally assessed.	The date of adjustment of duty after the final assessment thereof;
3. Duty of customs has been erroneously refunded.	The date of such refund.
4. in any other case.	Date of payment of duty or interest.

Note 1 :- For computing period of 2 year/ 5 years period of stay by order of court or tribunal shall be excluded

Note 2 :- Save as otherwise provided the proper officer may issue supplementary notice under such circumstances and its such manner as may be prescribed.

Note 3 :- The person liable to pay the said duty along with the interest due on such amount whether or not the amount of interest is specified separately

Where an order for refund is modified in any appeal and the amount of refund so determined is less than the amount refunded, the excess amount so refund shall be recovered along with interest thereon at the rate fixed by the central government from the date of refund up to the date of recovery, as a sum due to the government.



Notice demanding duty is held not sustainable in any proceeding under this act, including at any stage of appeal for the reason that the charges of collusion or any wilful miss-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.

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## CHAPTER 12: PENALTIES AND CONFISCATION

**SEARCHES, SEIZURE AND ARREST****SECTION 100: POWER TO SEARCH SUSPECTED PERSONS ENTERING OR LEAVING INDIA, ETC.**

- (1) **Search:** If the proper officer has reason to believe that -
- Any person to whom this section applies
  - Has secreted about his person, any goods liable to confiscation or any documents relating thereto,
  - He may search that person.
- (2) **Persons to which this section applies:** This section applies to the following persons, namely:-
- (a) Any person who has landed from or is about to board, or is on board any vessel within the Indian customs waters;
  - (b) Any person who has landed from or is about to board, or is on board a foreign-going aircraft;
  - (c) Any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;
  - (d) Any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;
  - (e) Any person in a customs area.

**SECTION 101: POWER TO SEARCH SUSPECTED PERSONS IN CERTAIN OTHER CASES**

- (1) **Search:** Without prejudice to the provisions of section 100, if an officer of customs -
- Empowered in this behalf by general or special order of the Commissioner of Customs,
  - Has reason to believe that
  - Any person has secreted about his person any goods of the description specified in (2) below
  - Which are liable to confiscation, or documents relating thereto, he may search that person.
- (2) **Goods to which this section applies :** The goods referred to in (1) above are the following :-
- (a) Gold;
  - (b) Diamonds;

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(c) Manufactures of gold or diamonds;

(d) Watches;

(e) Any other class of goods which Central Government may, by notification in Official Gazette, specify.

### **DIFFERENCE BETWEEN POWERS UNDER SECTIONS 100 AND 101**

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(a) Section 100 applies to specified persons (irrespective of goods), while section 101 applies to specified goods (irrespective of person).

(b) Search under section 100 can be undertaken in specified areas; while search under section 101 may be conducted at any place, i.e., even outside customs areas.

(c) Search under section 100 is conducted by proper officer while that under section 101 is conducted by the officer of customs empowered in this behalf by the Commissioner of Customs.

### **SECTION 102: PERSONS TO BE SEARCHED MAY REQUIRE TO BE TAKEN BEFORE GAZETTED OFFICER OF CUSTOMS OR MAGISTRATE**

(1) Taking person to be searched to gazette officer/magistrate, if required by such person : When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest gazette officer of customs or magistrate.

(2) Detention of such person until taken as aforesaid: If such requisition is made, officer of customs may detain the person making it until he can bring him before the gazette officer of customs or the magistrate.

(3) Procedure by Gazette Officer/Magistrate: The gazette officer of customs or the magistrate before whom any such person is brought shall, -

- (a) If he sees no reasonable ground for search, forthwith discharge the person
- (b) But otherwise shall direct that search be made.

(4) Procedure of search: Before making a search under the provisions of section 100 or section 101, the officer of customs -

- Shall call upon two or more persons to attend and witness the search and
- May issue an order in writing to them or any of them so to do; and
- The search shall be made in the presence of such persons and
- A list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses.

(5) Female to be searched by female: No female shall be searched by any one excepting a female.



## **SECTION 103: POWER TO SCREEN OR X-RAY BODIES OF SUSPECTED PERSONS FOR DETECTING SECRETED GOODS**

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- (1) **Detention of person referred to in section 100, if goods secreted inside body of that person:** Where the proper officer has reason to believe that any person referred to in section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate.
- (2) **Procedure by magistrate:** A magistrate before whom any person is brought under this section shall, -
  - (a) If he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person; and
  - (b) If he has reasonable ground for believing that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.
- (3) **Procedure of X-ray, etc. on order to that effect by Magistrate:** Where a magistrate has made order of screening/X-ray, in relation to any person, -
  - (a) The proper officer shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section,
  - (b) Such person shall allow the radiologist to screen or X-ray his body;
  - (c) Such radiologist shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him, to the **magistrate without unnecessary delay;**
  - (d) On receipt of a report from such radiologist or otherwise, if the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that **suitable action for bringing out such goods be taken** on the advice and under the supervision of -
    - A registered medical practitioner or
    - In case of a female, a female registered medical practitioner, and such person shall be bound to comply with such direction.
- (4) **Power of magistrate to order custody:** Where any person is brought before a magistrate under this section, such magistrate may for the purpose of enforcing the provisions of this section order such **person to be kept in such custody and for such period** as he may direct.
- (5) **Section not applies if person admits default:** Nothing in this section shall apply to any person, who -
  - (a) Admits that goods liable to confiscation are secreted inside his body, and



(b) Voluntarily submits himself for suitable action being taken for bringing out such goods.

(6) **Punishment for refusal to be x-rayed [Section 134]**: If any person -

- (a) Resists or refuses to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a Magistrate under section 103, or
- (b) Resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, as provided in section 103, he shall be punishable with **imprisonment for up to 6 months, or with fine, or with both.**

#### **SECTION 104: POWER TO ARREST**

(1) **Power to arrest in case of specified offences**: If an officer of Customs empowered in this behalf by general or special order of the **Commissioner of Customs** has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under **section 132 or section 133 or section 135 or section 135A or section 136**, he -

- (a) May arrest such person and
- (b) Shall, as soon as may be, inform him of the grounds for such arrest; and
- (c) Such person so arrested shall, without unnecessary delay, be taken to a magistrate.

(2) **Customs Officer to have all powers of a police officer**: Where an officer of customs has arrested any person under this section, he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the Code of Criminal Procedure, 1898.

#### **SECTION 105: POWER TO SEARCH PREMISES**

(1) **Officer who may exercise this power**:

- (a) Assistant or Deputy Commissioner of Customs, or
- (b) In any area adjoining the land frontier or the coast of India, an officer of customs specially empowered by name in this behalf by the Board.

(2) The powers and procedure are same as that contained in section 12F of the Central Excise Act, 1944. (The officer may himself or through other officer search for confessable goods, or, other documents/things useful under the Act).



Section applies for central excise/service tax purposes: This section has been made applicable for Central Excise and Service tax purposes vide section 12 of the Central Excise Act, 1944 and section 83 of the Finance Act, 1994.

## **SECTION 106: POWER TO STOP AND SEARCH CONVEYANCES**

(1) **Power in relation to conveyance used for smuggling, etc.:** Where the proper officer has reason to believe that any **aircraft, vehicle or animal in India** or any vessel in India or within the Indian customs water has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and -

- (a) Rummage and search any part of the aircraft, vehicle or vessel;
- (b) Examine and search any goods in the aircraft, vehicle or vessel or on the animal;
- (c) Break open the lock of any door or package for exercising the powers conferred by (a) and (b), if the keys are withheld.

(2) **Procedure to stop any conveyance or animal:** Where for the purposes of exercising aforesaid power -

- (a) It becomes necessary to stop any vessel or compel any aircraft to land, -
  - it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorized in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and
  - Thereupon, such vessel shall forthwith stop or such aircraft shall forthwith land; and
  - If it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and
  - If, after a gun is fired as a signal, the vessel fails to stop or the aircraft fails to land, it may be fired upon.
- (b) It becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

## **SECTION 106A: POWER TO INSPECT**

Any proper officer authorized in this behalf by the Commissioner of Customs may, -

- for purpose of ascertaining whether or not the requirements of this Act have been complied with,
- at any reasonable time,



- enter any place intimated under Chapter IVA or Chapter IVB (Sections 11A to 11N) and
- inspect the goods kept or stored therein and
- require any person found therein, who is for the time being in charge thereof, to produce to him for his inspection the accounts maintained under the said Chapter IVA or Chapter IVB and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported.

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**SECTION 107: POWER TO EXAMINE PERSONS**

Any officer of customs empowered in this behalf by general or special order of the Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods, -

- (a) Require any person to produce or deliver any document or thing relevant to the enquiry :
- (b) Examine any person acquainted with the facts and circumstances of the case.

**SECTION 108: POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND TO PRODUCE DOCUMENTS**

- Any Gazetted officer of custom shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this act.
- A summon to produce documents or other thing may be for the production of certain specified documents or other thing or for the production of all documents or thing of a certain description in the possession or under the control of the person summoned.
- All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required.



## **SECTION 109: POWER TO REQUIRE PRODUCTION OF ORDER PERMITTING CLEARANCE OF GOODS IMPORTED BY LAND**

### **Any officer of customs -**

- Appointed for any area adjoining the land frontier of India and
  - Empowered in this behalf by general or special order of the Board,
- May require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under section 47 permitting clearance of the goods.

However, nothing in this section shall apply to any imported goods passing from a land frontier to a land customs station by a route appointed under section 7(c).

## **SECTION 110: SEIZURE OF GOODS, DOCUMENTS AND THINGS**

(1) **Seizure of goods liable to confiscation**: If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

(2) **Detention of goods, which cannot be seized practicably**: Where it is not practicable to seize any such goods, the proper officer may -

- Serve on the owner of the goods an order that
- He shall not remove, part with, or otherwise deal with the goods
- Except with the previous permission of such officer.

**Seizure v. Detention**: Seizure means the Department takes possession of the goods physically; while under Detention, physical possession of goods is with the assesses, but, he cannot deal with such goods, except with the permission of Department. Therefore, seizure includes detention, but, every detention is not seizure. In fact, detention is "deemed seizure".

(3) **Disposal of notified category of seized goods**: The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation, constraints of storage space for the goods, etc., notify the goods or class of goods which shall, as soon as may be after its seizure, be disposed of by the proper officer in specified manner after following the procedure given below.

**Preparation of list and applying for certification, etc. of list to Magistrate**: The proper officer shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act. Thereafter, the proper officer shall make an application to a Magistrate (which application shall be allowed by the Magistrate) for the purpose of -

(a) Certifying the correctness of the inventory so prepared; or

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- (b) Taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or
- (c) Allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

## 12.8

**(4) Return of goods, if notice not given within 6 months from date of seizure:** Where -

- (a) any goods are seized under this section and
- (b) no notice in respect thereof is given u/s 124 within -
  - (i) 6 months of the SEIZURE OF THE GOODS, or
  - (ii) Period, which may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months, then, the goods shall be returned to the person from whose possession they were seized.

**Time-limit of 6 months applies to 'issue' of notice, not 'service' of notice:** The law doesn't require service of notice within 6 months, then also, such notice is valid compliance. The assesses cannot seek return of seized goods.- CCE v. Ram Kumar Aggarwal [2012] 280 ELT 13 (MP)

Notice may be issued even after 6 months (or extended to 1 year), but, goods will have to be returned: If notice is not issued within aforesaid period of 6 months, the goods are to be returned back to importer unconditionally. But, the right of Customs Department to issue notice u/s 124 survives i.e., notice may be issued even after expiry of 6 months/1 years as aforesaid. - Jatin Ahuja v. UOI [2013] 287 ELT 3(Del.) & Circular No. 7/2013-Cus., dated 19-2-2013.

**(5) Seizure of documents, etc.:**

- (a) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.
- (b) The person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts there from in the presence of an officer of customs. Section applies for central excise/service tax purposes: This section has been made applicable for Central Excise and Service tax purposes vide section 12 of the Central Excise Act, 1944 and section 83 of the Finance Act, 1994.

**CUSTOM CONFISCATION AND PENALTIES****CONFISCATION OF GOODS:**

The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are become property of Central Government, no duty liability arises on assessee whose goods are confiscated.

However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

**PROVISIONS GOVERNING CONFISCATION UNDER CUSTOMS ACT, 1962**

Goods are liable for confiscation in the following circumstances:

- Confiscation of improperly imported goods - Section 111.
- Export goods liable for confiscation - Section 113.
- Confiscation of Conveyances (i.e. Vehicles, Vessels, Air craft's, animals used as a means of transport in the smuggling) if used improperly for import or export of goods - Section 115.
- Confiscation of packages and their contents - Section 118
- Confiscation of goods used for concealing smuggled goods - Section 119.
- Confiscation of smuggled goods notwithstanding any change in form, etc. - Section 120 for example gold biscuits converted into jewellery. Hence, the entire value of jewellery is liable for confiscation.
- Confiscation of sale proceeds of smuggled goods - Section 121.

As per section 124 of the Customs Act, 1962, before confiscating goods, **Show Cause Notice must be issued to owner of goods giving grounds for confiscation.** Time limit of SIX months as given in Section 110 of the Customs Act, 1962 is not applicable. It means there is no time limit is specified in case of issue of SCN for confiscation of goods. As per section 28 of the Customs Act, 1962, goods can be confiscated even after the goods are cleared from customs station.

**WRONG CONFISCATION OF GOODS**

Once the action of the Customs department with regard to confiscation of goods, set aside by Tribunal or Court (i.e. set aside means make inoperative or stop) the person is eligible to get back the goods. If in the meanwhile, goods have been sold by the Customs authorities, market value of goods as on date of setting aside confiscation of the order of confiscation by the judgment is payable (Northern Plastics Ltd. v. CCE (2000) (SC)).

12.9

**SECTION 111: CONFISCATION OF IMPROPERLY IMPORTED GOODS**

The following goods brought from a place outside India shall be liable to confiscation:

- a) Any goods imported by sea or air which are unloaded or attempted to be unloaded at any place **other than a customs port or customs airport**.
- b) Any goods imported by land or inland water through any route **other than a route specified by the Govt.**
- c) Any dutiable or prohibited good brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port.
- d) Any goods which are imported or attempted to be imported or are brought within the Indian **customs waters contrary to the provisions which are in force.**
- e) Any dutiable or prohibited goods found concealed (i.e. hid) in any manner in any conveyance.
- f) Goods not mentioned in the **Import manifest or import report.**
- g) Goods **unloaded in contravention** of the provisions of customs law.
- h) Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof.
- i) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or warehouse **without the permission of the proper officer.**
- j) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77.
- k) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.
- l) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of customs.

**SECTION 112: PENALTIES FOR IMPROPER IMPORT UNDER OF THE CUSTOMS ACT, 1962:**

Penalty can be imposed for improper import as well as attempt to improperly export goods. 'Improper' means without the knowledge of the Customs officers.

Following monetary penalties prescribed under section 112 of the Customs Act, with regard to improper importation:



Imported Goods (A)	Value in (Rs.) (B)	Minimum Penalty in (Rs.) (C)	Penalty in (Rs.) (B) or (C)
Prohibited Goods	Value of prohibited goods	Rs. 5,000	Whichever is Higher
Dutiable Goods (other than prohibited goods)	Duty sought to be evaded	Rs. 5,000	Whichever is Higher
Misdeclaration of value	Value declared - Actual value = Rs. Xxxx	Rs. 5,000	Whichever is Higher
Prohibited Goods plus Misdeclaration value	(i) Value of prohibited goods or (ii) Value declared - Actual value Whichever is higher	Rs. 5,000	Whichever is Higher
Dutiable Goods plus Misdeclaration of Value	(i) Duty sought to be evaded OR (ii) Value declared - Actual Value Whichever is Higher	Rs. 5,000	Whichever is Higher

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### SECTION 113: EXPORT GOODS LIABLE FOR CONFISCATION

These are goods attempted to be improperly exported under clauses of section 113:

- Goods attempted to be exported by sea or air from place other than customs port or customs airport.
- Goods attempted to be exported by land or inland water through unspecified route.
- Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station.
- Goods attempted to be exported contrary to pro under Customs Act or any other law.
- Goods concealed in any conveyance brought within limits of customs area for exportation.
- Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34 of the Customs Act, 1962.





**These are goods attempted to be improperly exported under clauses of section 113:-**

- a) Goods attempted to be exported by sea or air from place other than customs port or customs airport.
- b) Goods attempted to be exported by land or inland water through unspecified route.
- c) Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station.
- d) Goods attempted to be exported contrary to prohibition under Customs Act or any other law.
- e) Goods concealed in any conveyance brought within limits of customs area for exportation.
- f) Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34 of the Customs Act, 1962.
- g) Goods stored at un-approved place or loaded without supervision of Customs Officer.
- h) Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage.
- i) OAny goods entered for exportation not corresponding in respect of value or any other particular in Shipping Bill or declaration of contents of baggage.
- j) Goods entered for export under claim for duty drawback which does not correspond in any material particulars with any information provided for fixation of duty drawback.
- k) Goods cleared for exportation which is not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission.
- l) Provision in respect of Specified Goods is contravened.

**SECTION 114: PENALTIES FOR IMPROPER EXPORT UNDER OF THE CUSTOMS ACT, 1962**

Following monetary penalties prescribed under the Customs Act, with regard to improper export:

Attempt to improperly export (A)	Value in (Rs.) (B)	Minimum Penalty in (Rs.) (C)	Penalty in (Rs.) (B) or (C)
Prohibited Goods	Three times the value of the goods as declared by the exporter	The value as determined under the Customs Act.	Whichever is Higher
Dutiable Goods (other than Prohibited goods)	Duty sought to be evaded	Rs. 5,000	Whichever is Higher
Other goods	Value declared in short	The value as determined under the Customs Act.	Whichever is Higher

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### **SECTION 115: CONFISCATION OF CONVEYANCES**

Vehicles, Vessels, Aircrafts, animals used as a means of transport in the smuggling or improperly for import or export of goods shall be liable to confiscation.

Any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods as the case may be.

### **SECTION 116: PENALTY FOR NOT ACCOUNTING FOR GOODS**

The person-in-charge of the conveyance shall be liable to pay penalty if any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance:.

#### **Quantum of penalty under Sec. 116:**

Imported Goods	Exported Goods
Penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been imported.	Penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been exported.

**SECTION 117: RESIDUAL PENALTY**

As per section 117 of the Customs Act, 1962, if no penalty has been prescribed for contravenes, then the penalty would be Rs. 1,00,000 can be levied (w.e.f. 10.5.2008).

**SECTIONS 118 TO 121: SCOPE OF CONFISCATION OF GOODS**

Sec.	Title	Provision
118	Confiscation of packages and their contents	<p>(a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.</p> <p>(b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.</p>
119	Confiscation of goods used for concealing smuggled goods	<p>Any goods used for concealing smuggled goods shall also be liable to confiscation.</p> <p><b>Note:</b> In this section, "goods" does not include a conveyance used as a means of transport.</p>
120	Confiscation of smuggled goods notwithstanding any change in form, etc.	<p>(1) Smuggled goods may be confiscated notwithstanding any change in their form.</p> <p>(2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.</p> <p>However, where the owner of such goods proves that the he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation.</p>
121	Confiscation of sale-proceeds of smuggled goods	Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

**SECTION 122: ADJUCATION OF CONFISCATIONS AND PENALTIES**

In every case under this chapter in which anything is liable to confiscation or any person is liable to a penalty such confiscation or penalty may be adjudged

- Without limit by a commissioner of custom or a joint commissioner of custom
- Where the value of the goods liable to confiscation does not exceed Rs 5 lakhs by an AC or DC of Custom.
- Where the value of the goods liable to confiscation does not exceed Rs 50,000 by a Gazetted officer of custom lower in rank than AC or DC of Custom.

**SECTION 123: ADJUCATION OF SEIZED**

Where any goods to which this section applies are seized under this act in the reasonable belief that they are smuggled goods the burden of proving that they are not smuggled goods shall be

- a) In a case where such seizure is made from the possession of any person  
On the person from whose possession the goods were seized and  
If any person other than the person from whose possession the goods were seized claims to be owner thereof also on such other person
- b) In any other case on the other person, if any who claims to be the owner of the goods so seized

This section shall apply to gold and manufactures thereof watches, and any other class of goods which the Central government may be by notification in the official Gazette specify

**SECTION 124: ISSUE OF SCN BEFORE CONFISCATION OF GOODS**

No order confiscating any goods or imposing any penalty on any person shall be made under this chapter unless the owner of the goods or such person

- a) Is given a notice in writing with the prior approval of the officer of custom not below the rank of an AC of custom, informing him of the **grounds on which** it is proposed to confiscate the goods or to impose a penalty
- b) Is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein and
- c) Is given a reasonable opportunity of being heard in the matter

Provided that the notice referred to the clause (a) and the representation referred to in clause (b) may. At the request of the person concerned be oral.

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**SECTION 125: REDEMPTION FINE**

The term redemption fine means **Option to pay fine in lieu of confiscation**. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner of Customs provides an option to the importer to pay fine in lieu of confiscation [Section 125(1) of the Customs Act,];

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, **such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.**

**Such an importer is liable to pay in addition to the customs duty and charges payable in respect of such imports, the penalty.**

- **Example:** A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed; Assessable value - Rs. 50,000, Total duty payable - Rs. 20,000, Market value - 1,00,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

**Answer:**

In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = Rs. 50,000 + Rs. 20,000 = Rs. 70,000

Margin of profit =

Market value - Total cost to importer = Rs. 1, 00,000 - Rs. 70,000 = Rs. 30,000.

Hence, redemption fine will be Rs. 15,000 @ 50% of Rs. 30,000). In addition, duty of Rs. 20,000 is payable. Thus, importer will have to pay totally Rs. 35,000 to clear the goods from customs.

**Selling the confiscated goods during the period of pendency of appeal was not justified:**

The Customs Officer confiscated the gold carried by the petitioner from Muscat. The Customs Department received the letter from the petitioner about his willing to file an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods. The action of the custom authorities in selling the gold



**Option to redeem the goods with Adjudicating Authority under section 125:**

Adjudicating Authority is vested with the discretion to give an option either to confiscate or redeem the prohibited goods imported / exported even though the goods are liable to absolute confiscation but in case of other goods [CCus v. Alfred Menezes 2009 (242) ELT 334 (Bom.)]

**Goods are not redeemed by paying fine:**

Where the imported goods are confiscated u/s 125 and goods are not redeemed by paying fine, the importer is bound to pay the customs duty [Poona Health Services v. CCus, 2009 (242) ELT 335 (Bom)].

**No redemption of fine, if goods not available for confiscation:**

The concept of redemption fine arises in the event when the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods u/s 125. The question of confiscating the goods would not arise if there are no goods available for confiscation. [CCus v. Finesse Creation Inc. 2009 (248) ELT 122 (Bom)].



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## OFFENCES & PROSECUTION

### OFFENCES & PROSECUTION

section	offence	Prosecution
SEC 132	<b>False declaration, false documents, etc.</b> Whoever makes signs or uses or causes to be made signed or used any declaration, statement or documents in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular.	Shall be punishable with imprisonment for a term which may extend to two years, or with fine or with both.
SEC 133	<b>Obstruction of officer of custom.</b> If any person initially obstruct any officer of customs in the exercise of any powers conferred under this act, such person	

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### SECTION 134: REFUSAL TO BE X-RAYED

#### If any person-

- Resist or refuse to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a magistrate under section 103 or
- Resist or refuse to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, as provided in section 103,  
He shall be punishable with imprisonment.

### SECTION 135: EVASION OF DUTY OR PROHIBITIONS

- 1) Without Prejudice to any action that may be taken under this Act, if any person
  - a) Is in relation to any goods in any way knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act, or any other law for the time being in force with respect to such goods, or
  - b) Acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any





other manner dealing with any goods which he knows or has reason to believe are liable to confiscation .

- c) Export any goods which he knows or has reason to believe are liable to confiscation under section 113, or
  - d) Fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this act in connection with export of goods.
- He shall be punishable,

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OFFENCE	PUNISHMENT
<p><b><u>A) In the case of an offence relating to-</u></b></p> <ol style="list-style-type: none"> <li>1- Any goods the market price of which exceeds one Crore of rupees or</li> <li>2- The evasion or attempted evasion of duty exceeding fifty lakh of rupees or</li> <li>3- Such categories of prohibited goods as the central government may, by notification in the official gazette , specify or</li> <li>4- Fraudulently availing of or attempting to avail of drawback or any exemption of duty referred to in clause, if the amount of drawback or exemption of duty exceeds fifty lakh of rupee,</li> <li>5-</li> </ol> <p><b><u>B) In any other case-</u></b></p> <p>First time offence Second and for every subsequent offence</p>	<p>With imprisonment of the term which may extend to seven year and with fine Provided that in the absence of special and adequate reason to the country to be recorded in the judgement of the court such imprisonment shall not be for less than one year</p> <p>With imprisonment of the term which may extend to three year and with fine or with both</p> <p>With imprisonment for a term which may extend to seven years and with fine Provided that in the absence of special and adequate reason to the country to be recorded in the judgment of the court such imprisonment shall not be for less than [one year].</p>

**Following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than [one year], namely**

- The fact that the accused has been convicted for the first time for an offence under this Act;
- The accused has been ordered to pay a penalty



- The fact that the accused was not the principle offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;
- The age of the accused;

**SECTION 135A: PREPARATION**

If a person makes preparation to export any goods in contravention of the provisions of this Act, and from the circumstances of the case it may be reasonably inferred that if not prevented by circumstances independent of his will, he is determined to carry his intension to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

**SECTION 138A: PRESUMPTION OF CULPABLE MENTAL STATE**

- 1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the Act charged as an offence in that prosecution.

**EXPLANATION:** In this section "culpable mental state" includes intension, motive, knowledge of a fact and belief in, or reason to believe, a fact.

- 2) For the purpose of the section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

**SECTION 139: PRESUMPTION AS TO DOCUMENTS IN CERTAIN****CASES****Where any document –**

- 1) Is produced by any person or has been seized from the custody or control of any person in either case under this Act or under any other law or
- 2) He has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act,  
And such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the court shall;
  - a) Presume unless the contrary is proved that the signature and every other part of such documents which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been

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signed by, or to be in the handwriting of any particular person, is in that persons handwriting, and in the case of a documents executed or attested, that is was executed or attested by the person by whom it purports to have been so executed or attested.

- b) Admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.
- c) In a case falling under clause 1) also presume, unless the contrary is proved, the truth of the contents of such documents.

### **SECTION 140: OFFENCES BY COMPANIES**

#### **1) If the person committing an offence under this chapter is a company.**

- Every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company.

- As well as the company,

Shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

**Provided** that nothing contained in this sub-section shall render any such person liable to such punishment provided in this chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Where an offence under this chapter has been committed by a company and it is proved that the offence has been committed with the

- Consent or
- Connivance of, or
- Is attributable to any negligence.

On the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**EXPLANATION:** For the purposes of this section,-

- a) "Company" means a body corporate and includes a firm or other association of individuals; and
- b) "Director", in relation to a firm, means a partner in the firm.

## CHAPTER 14 ADVANCE RULING AND SETTLEMENT COMMISSION

### **INTRODUCTION**

Advance ruling is a ruling to determine in advance the tax liability in respect of proposed business activity. Concept of advance ruling was introduced in Customs Act, 1962 vide Finance Act, 1999. Moreover the Customs

**(Advance Ruling) rules, 2002 has also been formulated to regulate the mechanism in efficient manner. Objects for advance ruling under Customs are as under:**

- It provides clarity, certainty and transparency for tax liability under Customs Act well in advance in relation to any economic activity/transaction proposed to be undertaken by the applicant.
- It reduces litigations and expensive legal disputes.
- It attracts Foreign Direct Investment (FDI).
- It pronounces rulings expeditiously in transparent and efficient manner.

**"The term "advance ruling" is defined under section 28E(b) of the Customs Act, as "a written decision on any of the questions referred to in section 28H raised by the applicant in his application in respect of any goods prior to its importation or exportation".**

**Definition of the terms used in this section is as under:**

**As per section 28E(c) applicant means**

- 1) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
- 2) a resident setting up a joint venture in India in collaboration with a non-resident; or
- 3) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India;
- 4) a joint venture in India; or

a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 28H

**Explanation-** For the purposes of this clause, joint venture in India means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders are a non-resident having substantial interest in such arrangement.

Application means an application made to the Authority under sub-section (1) of section 28H;

**AUTHORITY MEANS THE AUTHORITY FOR ADVANCE RULINGS CONSTITUTED OR AUTHORIZED UNDER CUSTOMS ACT, 1962**

Chairperson- means the Chairperson of the Authority;

Member- means a member of the Authority and includes the Chairperson.

**Illustration 1**

*Whether a resident intends to export goods in India, but has doubt about their classification can obtain advance ruling under customs?*

**Solution**

Yes. The resident can obtain advance ruling prior to importation of goods. He can apply in person or through his authorized representative. Following person can be authorized representative as specified under section 146A(2) of the Customs Act:

**THE APPLICANT MAY APPLY FOR ADVANCE RULING FOR FOLLOWING QUESTIONS:**

- 1) Classification of goods under the Customs Tariff Act, 1975 (51 of 1975);
- 2) Application of a exemption notification issued under sub-section (1) of section 25, having a bearing on the rate of duty;
- 3) Principles to be adopted for the purposes of determination of value of the goods under the provisions of this Act;
- 4) Applicability of notifications issued in respect of duties under this Act or the Customs Tariff Act, 1975 and any tax or duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under this Act or the Customs Tariff Act;
- 5) Determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975 (51 of 1975) and matters relating thereto.
- 6) Any other matter as the Central Government may, by notification specify.
- 7) Hence Central Government is empowered to add any scope for advance ruling in addition to scope mentioned above.

**AUTHORITY FOR ADVANCE RULING (SECTION 28EA AND SECTION 28F)**

The Appellate Authority is empowered for advance ruling. Provisions related to constitution of separate Authority for Advance Rulings covered in Section 28EA of the Act are as under: For the purposes of giving advance rulings under this Act, the Board may, by notification appoint an officer of the rank of Principal Commissioner of Customs or Commissioner of Customs to function as a

**CUSTOMS AUTHORITY FOR ADVANCE RULINGS.**

Hence, the existing Authority for Advance Rulings constituted under section 245-O of the Income Tax Act, 1961 shall cease to act as an Authority for advance ruling. from the date of appointment of the Customs Authority for Advance Rulings under this section.

The offices of the Authority may be established in New Delhi and at such other places, as the Board may deem fit.

The Authority shall exercise the powers and authority conferred on it by or under this Act.

The said appellate authority shall exercise the jurisdiction, powers and authority conferred on it by or under Customs Act.

### **PROCEDURE OF APPLICATION FOR ADVANCE RULING (SECTION 28H)**

- 1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in Form AAR
- 2) (CUS-1) as prescribed by the Central government. This form should be filed in quadruplicate and accompanied by fees of ten thousand rupees, stating the question on which the advance ruling is sought. The application should be filed along with verification contained therein and all relevant documents accompanying such application.
- 3) An applicant may withdraw its application within thirty days from the date of the application. However it is provided by Regulation 17 of Authority for Advance Rulings that the application can be withdrawn after thirty days from the date of such application with the permission of the Appellate Authority. The Authority after considering facts and circumstances of each case may permit or reject to withdraw the Application.
- 4) The application for advance ruling can also be filed by the person resident in India as representative of the applicant who is authorized in this behalf. It is pertinent to note that representation can be made by resident only. Hence representation by non-resident before Advance Ruling Appellate Authority is not allowed.

### **Illustration 2**

*Whether application for advance ruling can be withdrawn?*

### **Solution**

An applicant can withdraw the application for advance ruling within thirty days from the date of application. If applicant wants to withdraw the application after thirty days, it can be withdrawn after obtaining permission of the Appellate Authority.



**PROCEDURE ON RECEIPT OF APPLICATION (SECTION 28-I)**

*Following procedure should be followed by the Appellate Authority for Advance Ruling.*

**(1) Call for relevant records:**

On receipt of the application, the Authority shall forward a copy thereof to the Principal Commissioner/ Commissioner of Customs and, if necessary, call upon him to furnish the relevant records. Where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Principal Commissioner/Commissioner of Customs. If at any stage of the proceedings, it has brought to the notice of the Authority that there is any factual or material error in records, the Authority may permit amendment of the records after hearing the applicant.

**(2) Allow or reject the application:**

- The Authority may after examining the application and the records called for, by order, either allow or reject the application. However the authority shall not allow the application where the question raised in the application is:
- Already pending in the applicant's case before any officer of customs, the Appellate Tribunal or Court;
- The same as in a matter already decided by the Appellate Tribunal or any Court, In case of *Dell India Private Limited Vs. Commissioner of Customs AAR/02 (CUS) 2005*, it was held that *"the intention of the Parliament is that the Authority shall not entertain an application in which the question posed for seeking advance ruling has already been decided by the Appellate Tribunal or any Court. Hence when the question raised in the application is the same as in already decided by the Appellate Tribunal or any court, the Authority shall not allow the application."*

**Illustration 3**

*Mr. A has filed application for advance ruling for classification of goods. He has filed the application for same question one month ago with the officer of Customs, which is pending for pronouncement. Whether Mr. A is eligible to file the application again?*

**Solution**

When an application for advance ruling for same question is pending before any officer of customs, the Appellate Tribunal or Court in the applicant's case, no other application can be filed till the decision of original application. Hence if Mr. A has filed application for advance ruling again, such application may be rejected.

**(3) Opportunity of being heard:**

Before rejecting the application, the Authority shall give an opportunity to the applicant of being heard. Where the application is rejected, reasons for such rejection shall be given in the order. Also before pronouncing its advance ruling the authority shall, provide an opportunity to the applicant of being heard, either in person or through a duly authorized representative if the request is received from the applicant,



**Illustration 4**

*Discuss the provisions of personal hearing for advance ruling under customs.*

**Solution**

No application for advance ruling shall be rejected unless the Authority has given opportunity to the applicant for being heard. Also, before pronouncing advance ruling, the personal hearing can be given to the applicant himself or to his authorized representative.

**(4) Forwarding of copy of order of advance ruling:**

Where an application is allowed under this section, the Authority shall after examining such further material as may be placed before it by the applicant or obtained by the authority pronounce its advance ruling on the question specified in the Application.

The authority shall pronounce its advance ruling within three months on receipt of application. A copy of advance ruling pronounced by the authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Principal Commissioner/Commissioner of Customs, as soon as may be, after such pronouncement.

**BINDING NATURE OF ADVANCE RULING (SECTION 28J)**

*An Advance Ruling pronounced by the authority under section is binding only-*

1) To the applicant; and

In respect of any matter referred to in sub-section (2) of Section 28H;

2) On the Principal Commissioner/Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant.

The Advance Ruling is valid till there is a change in law or facts on the basis of which the advance ruling has been pronounced.

**Illustration 5**

*Mr. Shubham wants to import goods in India and has doubt about classification of some goods. He has come to know that similar advance ruling was pronounced five years ago in his friend Mr. Shiva's case. Whether Mr. Shubham can follow the advance ruling pronounced in Mr. Shiva's case?*

**Solution**

The advance ruling pronounced by the authority is binding only to the applicant and to the concerned Principal Commissioner/Commissioner of Customs. It cannot be followed in similar other cases. Hence Mr. Shubham cannot follow advance ruling pronounced five years ago in his friend's case. He has to file application for advance ruling as per rules.

**ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES (SECTION 28K)**

- Where the authority finds on a representation made to it by the Principal Commissioner of Customs or Commissioner of Customs or otherwise that an Advance Ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply to the applicant as if such advance ruling had never been made.
- In computing the period of two years referred to in clause (a) of sub-section (1) of section 28, or five years referred to in sub-section (4) thereof, for service of notice for recovery of any duty not levied, short levied, not paid or short paid on account of the advance ruling, the period beginning with the date of such advance ruling and ending with the date of the order under this sub-section shall be excluded. Hence when such order has been void, the period of limitation will be counted from the order and not from the date of payment of duty or otherwise as the case may be. A copy of the order made under this section shall be sent to the applicant and the Principal Commissioner/Commissioner of Customs.

**APPEAL TO THE APPELLATE AUTHORITY (SECTION 28KA)**

- Any officer authorized by the Board, by notification, or the applicant may file appeal to the Appellate Authority against any ruling or order passed by the Authority, within sixty days from the date of communication of such ruling or order, in such form and manner as may be prescribed.
- Where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period so specified, it may allow a further period of thirty days for filing such appeal. The provisions of section 28-I and 28J shall *mutatis mutandis* apply to the appeal under this section.

**POWERS OF AUTHORITY OR APPELLATE AUTHORITY (SECTION 28L)**

The Authority or Appellate Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records have all the powers of civil court under the Code of Civil Procedure, 1908.

The Authority or Appellate Authority has powers to hear and determine all application and petitions. The authority may reopen the hearing of any case, before pronouncement of its order/advance ruling for sufficient cause. The Authority may in sufficient case direct-

- Discovery and inspection;
- Enforcing the attendance of any person and examining him on oath;
- Issuing commissions and;
- Compelling production of books of accounts.

**Illustration 6**

*Whether advance ruling pronounced by the authority can be challenged by the applicant or by the Commissioner before the High Court or the Supreme Court?*

**Solution**

The advance ruling pronounced by the authority can be challenged in High Court or Supreme Court. The aggrieved party has to first go to High Court to a single judge and then to a division bench and then to the

**Supreme Court.** When the advance ruling is challenged before the High Court, the same should be heard directly by the division bench of the High Court

**PROCEDURE FOR AUTHORITY AND APPELLATE AUTHORITY (SECTION 28M)**

The Appellate Authority shall, subject to the provisions of this chapter, have powers to regulate its own procedure in all matter arising out of the exercise of its powers and authority under this Act.

When does an advance ruling is held to be void ab- initio? (May 2005, 2 marks)

**ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 28K] [AMENDED BY FINANCE ACT, 2018 W. E. F. 29-03-2018]**

Where the authority finds, on a representation made to it by the principle commissioner or commissioner of customs or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.

When an advance ruling is declared to be void under this section, then, all the provisions of this Act shall apply to the applicant as if such advance ruling had never been made.

**Exclusion of time for computing period of limitation:** In computing the period of 2 years referred to in section 28(1) or 5 years referred to in section 28(4) thereof, for service of notice for recovery of any duty not leave, short leave, not paid or short paid on account of the advance ruling, the period beginning with the date of such advance ruling and ending with the date of the order under this section shall be excluded.

A copy of the order made under this section shall be sent to the applicant and the principal commissioner of customs or commissioner of customs.

Provisions of filling appeal against advance ruling pronounce by the authority.

**APPEAL [SECTION 28KA] [AMENDED BY FINANCE ACT, 2018 W. E. F. 29-03-2018]:**

- 1) Appeal to be filled within 60 days: Any officer authorised by the board, by notification, of the applicant may file an appeal to the appellate authority against any ruling or order passed by the authority within 60 days from the date of the communication of such ruling or order in such form and manner as may be prescribed.

- 2) Condonation of delay - 30 days: where the appellate authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period so specified, it may allow a further period of 30 days for filling such appeal.
- 3) The provisions of section 28-I and 28-J shall, mutatis mutandis, apply to the appeal under this section.

**POWER OF THE AUTHORITY OR APPELLATE AUTHORITY FOR ADVANCE RULING UNDER THE CUSTOM'S ACT, 1962.**

*Powers of authority or appellate authority [section 28M] [amended by finance act, 2018 w. e. f. 29-03-2018]: the authority or appellate authority shall have the powers of, -*

- (a) Discovery and inspection;
- (b) Issuing commissions;
- (c) Enforcing attendance of any person and examining him under oath;
- (d) Compelling production of books of accounts and other records;

The authority or appellate authority shall be deemed to be a civil court and every proceeding before the authority or appellate authority shall be deemed to be judicial proceeding.

**PROCEDURE TO BE FOLLOWED BY AUTHORITY OR APPELLATE AUTHORITY.**

*Procedure for authority and appellate authority [section 28M] [amended by finance act, 2018 w. e. f. 29-03-2018]:*

- (1) The authority shall follow such procedure as may be prescribed.
- (2) The appellate authority shall, subjects to the provisions of this chapter, have power to regulate its own procedure in all matters arising out of the exercise of its power and authority under this Act.

**SETTLEMENT OF CASES****SETTLEMENT COMMISSION**

- The customs, central excise and service tax settlement commission (herein after referred as 'settlement commission') is constituted under section 32 of the central excise Act, 1944. The objective of settlement commission is to provide quick and easy settlement of tax of dispute of high revenue stake which save time and energy of both litigants and departments.
- The settlement commission has the power to reduce or waive the penalty or fine or to grant immunity from prosecution if the applicant has made a true and full disclosure of his duty liability. It is a compromise arrangement to avoid lengthy and costly litigation.

**CASE [SECTION 127 A (B)]****"case" mean, -**

- Any proceeding under this act or any other act,
- For the levy, assessment and collection of customs duty,
- Pending before an adjudicating authority on the date on which an application for settlement is made.

**Proceeding remanded by court/ tribunal/ other authority - not pending proceeding:** However, when any proceeding is referred back by any court, appellate tribunal or any other authority, to the adjudicating authority for a fresh adjudication / decision, then such proceeding shall not be deemed to be a 'proceeding pending'.

**CONDITIONS FOR FILLINGS APPLICATION TO SETTLEMENT COMMISSION****The relevant provisions are discussed as under -****1) Application in prescribed form:**

Any importer, exporter or any other person may, in respect of a case, relating to him make an application, before adjudication to the settlement commission to have the case settled, in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars of such dutiable goods in respect of which he admit short levy on account of misclassification, under-valuation and inapplicability of exemption notification or otherwise and such application shall be disposed of in prescribed manner.

**2) Conditions for filling application to settlement commission:**

According to section 127B of the custom Act 1962, the following conditions are to be fulfilled for filling an application for settlement of case.

- The applicant has -  
(a) Filed a bill of entry, or a shipping bill, or a bill of export, or

- (b) Made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be,
- A show cause notice in respect of such bill of entry or shipping bill has been issued to the applicant by the proper officer.
  - The additional duty accepted is more than Rs. 3 Lakhs.
  - The case is not pending with CESTAT or any court.
  - The application does not relate to goods to which section 123 applies or to goods in relation to which any offence under the narcotic drugs and psychotropic substances Act, 1985 has been committed.
  - The application not for the interpretation of the classification of the goods under the customs tariff Act, 1975.
  - The applicant has paid the additional amount of customs duty accepted by him along with interest under section 28AA.

**3) Application by other person:**

Any person, other than an applicant referred to in section 127B(1), may also make an application to the settlement commission in respect of a show cause notice issued to him in a case relating to the applicant which has been settled or is pending before the settlement commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be specified by rules.

- 4) Fee:** An application to settlement commission shall be made in prescribed form with a fee of Rs. 1000.

- 5) Applicant can't be withdrawn:** A settlement application cannot be withdrawn by the applicant.



**PROCEDURE ON RECEIPT OF APPLICATION [SECTION 127C]**

The following procedure to be followed by the settlement commission for disposal of a case,-

**(1) Acceptance or rejection of application :**

Chronological Events	Time limit
Settlement commission shall issue notice to applicant requiring him to explain as to why application made by him be allowed to be proceeded with	Within 7 days from date of receipt of application
After hearing the applicant, settlement commission shall pass a written order rejection the application or allow it to be proceeded with	Within 14 days from the date of the notice

- 1) However, where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.
- 2) In case the application is rejection, the proceeding before the Settlement Commission shall abate on the date of rejection.
- 3) A copy of order allowing or rejection the application shall be sent to applicant and Principle Commissioner or Commissioner.

**2) Calling report from the Principal Commissioner or Commissioner:**

Chronological Events	Time limit
Settlement Commission shall call for a report from Principle Commissioner or Commissioner in respect of an application which is allowed to be proceeded with	Within 7 days from the date of order allowing the application to be proceeded
Principal Commissioner or Commissioner shall furnish the report to Settlement Commission	Within 30 days of receipt of communication from Settlement Commission

However, where the Principal Commissioner or Commissioner has not furnished the report within the aforesaid period, Settlement Commission shall proceed further in the matter without the report of the Principal Commissioner or Commissioner.

**3) Direction to Commissioner (Investigation) for further investigation:**

Chronological Events	Time limit
The Settlement Commission may, after examination of report of Principal Commissioner or Commissioner, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct the Commissioner	Within 15 days from the date of receipt of report of Principal Commissioner or Commissioner.



(Investigation) to make or cause to be made such further enquiry or investigation.	
The Commissioner (investigation) has to furnish a report on the matter covered by the application and any other matter relating to the case.	Within a period of 90 days of the receipt of the communication from the Settlement Commission

However, if the commissioner (investigation) does not furnish the report within the aforesaid period, the settlement commission shall processed to pass an order without such report.

#### **4) Final order by settlement Commission:**

- after examination of the records and the report of the Commissioner including the report of the Commissioner investigation if any, and after giving an opportunity of being heard both to the applicant and to the principal commissioner or commissioner and after examining such further evidence as may be placed before it, the settlement Commission May pass final order as it thinks fit in accordance with the provisions of the act
- The final order shall be pass only on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the principal commissioner or commissioner and commissioner (investigation).

#### **5) Power to rectify mistake apparent form record:**

- The Settlement Commission may, at time within three months from the date of passing of the final order, amend such order to rectify any error apparent on the face of record, either suo motu or when such error is brought to its notice by the jurisdictional Principal Commissioner of Custom or Commissioner of Customs or the applicant.
- However, no amendment which has the effect of enhancing the liability of the applicant shall be made under this sub-section, unless the Settlement Commission has given notice of such intention to the applicant and the jurisdictional Principal Commissioner of Customs or Commissioner of Custom as the case may be, and has given them a reasonable opportunity of being heard.

#### **6) Terms of final order :**

- The final order passed shall provide for the terms of settlement including any demand by way of Duty, penalty or interest the manner in which any sums due under the settlement shall be paid and all other metals to make the settlement effective and in case of rejection contain the reason therefore and it shall also provide that the settlement shall be void if it is subsequently found by the settlement Commission that it has been obtained by fraud or misrepresentation of facts.
- However, the amount of settlement ordered by the settlement Commission shall not be less than the duty liability admitted by the applicant under section 127 b.

**7) Recovery of sums due under settlement:**

Where any duty interest fine and penalty payable in pursuance after final order is not paid by the assessee within 30 days of receipt of a copy of the order by him the amount which remains unpaid shall be recovered along with interest thereon as the sums due to the central government by the proper officer having jurisdiction over the assessee in accordance with the provisions of section 142 of the customs act 1962.

**8) Consequence if settlement becomes void:**

Where a settlement becomes void the proceeding with respect to the matters covered by the settlement shall be deemed to have been reviewed from the stage at which the application was allowed to be processed with by the settlement commission and the proper officer having jurisdiction may notwithstanding anything contained in any other provision of this act complete such proceeding at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void.

**9) Order of settlement to be conclusive:**

As per section 127 J every order of settlement passed under section 127C shall be conclusive as to the matters started there in and no matter covered by such order shall save as otherwise provided in this chapter, be reopened in any proceeding under this act or under any other law for the time being in force.

**10) Recovery of sums under order of settlement:**

As per section 127K any sum specified in an order of settlement passed under section 127C may subject to such conditions if any as may be specified therein be recovered and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the central government in accordance with the provisions of section 142, by the proper officer having jurisdiction over the applicant.

**POWER OF SETTLEMENT COMMISSION TO ORDER PROVISIONAL ATTACHMENT TO PROTECT REVENUE [SECTION 127D]:**

- 1) Provisional attachment - to protect interest or revenue:** Where during the pendency of any proceeding before it the settlement commission is of the opinion that for the purpose of protecting the interest of revenue it is necessary to do it may by order attach provisionally and property belonging to the applicant in the manner as may be prescribed.
- 2) Cessation of attachment order:** Every provisional attachment made by the settlement Commission shall cease to have effect from the date the sums due to the central government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the settlement Commission.

**POWER OF SETTLEMENT COMMISSION TO GRANT IMMUNITY FROM PROSECUTION AND PENALTY [SECTION 127H]**

The relevant provisions are discussed as under-

- 1) **Grant of immunity from penalty/ prosecution/ fine under the act:** The settlement Commission, subject to certain provisions has the power to grant immunity from prosecution in respect of the case covered by the settlement if the applicant has cooperated with the commission and has made full and complete disclosure if the payment is not made as per the settlement order or any particular are concealed or any false evidence is given, the immunity is withdrawn.  
Immunity can be granted only in respect of prosecution for any offence under the customs act and not in respect of prosecution for any offence under the Indian Penal Code or any other Central law.
- 2) **Prosecution proceeding commenced before filling application - No immunity can be granted:**  
If prosecution has already been launched before submission of application for settlement the immunity cannot be granted.
- 3) **Withdrawal of immunity if sums not paid or terms of settlement not complied with:**  
An immunity granted to a person shall stand withdrawn if such person fails to pay any some specified in the order of the settlement within the time specified in such order or fails to comply with any other conditions subject to which the immunity was granted and thereupon the provisions of this act shall apply as if such immunity had not been granted.
- 4) **Immunity may be withdrawn of concealment or on giving false evidence:** On immunity granted to a person may, at any time be withdrawn by the settlement Commission, if it is satisfied that such person had in the course of the settlement proceeding concealed any particular material to the settlement or had given false evidence, and thereupon search person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this act to which such person would have been liable, had no such immunity been granted.

**BAR ON SUBSEQUENT APPLICATION FOR SETTLEMENT IN CERTAIN CASES [SECTION 127L]:****Where -**

(1) An order of settlement provides for the imposition of a penalty on the person who made the application for settlement, on the ground of concealment of particulars of his duty liability; or

**Explanation:** The concealment of particulars of duty liability relates to any such concealment made from the custom officer.

(2) After the passing of an order of settlement in relation to case, as aforesaid, such person is convicted of any offence under this act in relation to that case; or

(3) The case of such person is sent back to custom officer having jurisdiction by the settlement commission under section 127-I

Then, he shall not be entitled to apply for settlement in relation to any other matter.

## CHAPTER 15: APPEAL AND REVISION

### **APPEAL TO COMMISSIONER (APPEAL) (SECTION 128)**

- Customs Act contains provisions related to judicial review for resolution of disputes by way of appeal and review. Provisions related to appeal and revision is covered in chapter XV of the Act.. Under this chapter, both assessee and the department has right to appeal against order passed under the Customs Act and rules. There are three stages of appeal, two stages of revision and further appeal to Supreme Court.
- First stage of appeal is appeal to Commissioner (Appeal). Any person aggrieved by any decision or order passed under this Act by an officer of Customs below the rank of a Principal Commissioner/Commissioner of Customs may appeal to the Commissioner (Appeal) within sixty days from the date of the communication to him of such decision or order. However, if the Commissioner (Appeal) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, he may allow a further period of thirty days.
- Commissioner (Appeal) may, if sufficient cause is shown at any stage of hearing of an appeal proceeding, grant time, from time to time to the parties and adjourn the hearing for reasons to be recorded in writing. However, such adjournment shall not be granted for more than three times to a party during the proceeding.

#### **Illustration 1**

*Mr. A has filed appeal before Commissioner (Appeal). Due to some reason he has filed the appeal after 120 days from the date of receipt of communication. He has filed application for condonation of delay as he has sufficient cause for not filing the appeal within specified time limit. Whether Commissioner (appeal) can condone the delay of 120 days?*

#### **Solution**

As per section 128 of the Act, Commissioner (Appeal) can condone the delay for a further period of 30 days, if he is satisfied that there was sufficient cause for not producing the appeal within specified time period of 60 days. But the Commissioner (appeal) has no power to condone the delay beyond a period of 30 days after expiry of original period of limitation. Hence such application filed for condonation of delay shall be dismissed.

**PROCEDURE FOR FILING APPEAL TO COMMISSIONER (APPEAL)**

- 1) Aggrieved party can file appeal before Commissioner (Appeal). Hence **a person who is not a party to the original proceeding cannot file an appeal**. Appeal to the Commissioner (Appeal) is to be filed in Form No. CA -1. The form of appeal is to be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.
- 2) No additional grounds, other than those grounds raised in original proceedings can be raised in appeal.
- 3) Additional grounds can be raised in appeal only when it is established that such grounds are bonafide and could not be raised earlier.
- 4) The appellant shall be entitled to produce any evidence before Commissioner (Appeal) in following circumstances:
- 5) Where the adjudicating authority has refused to admit evidence which ought to have been admitted; or
- 6) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by that authority; or
- 7) Where the appellant was prevented by sufficient cause from producing before the authority any evidence which is relevant to any ground of appeal; or
- 8) Where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- 9) Such evidences can be admitted only when the Commissioner (Appeal) record in writing the reason for its admission.

**PROCEDURE UNDERTAKEN BY COMMISSIONER (APPEAL) (SECTION 128A)**

**Procedure undertaken by Commissioner (appeal) is as under:**

**(1) Admit additional grounds of appeal:**

The Commissioner (Appeal) shall give an opportunity to the appellant to be heard if he so desires. The Commissioner (Appeal) may at the time of hearing of an appeal allow the appellant to raise any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeal) is satisfied that the omission of that ground from the grounds of appeal was not will-full or unreasonable.

**(2) Remand the case:**

- The Commissioner (Appeal) shall after making such further inquiry as may be necessary, pass such order, as he think just and proper-
- Confirming, modifying or annulling he decision or order appealed against; or
- Referring the matter back to the adjudicating authority with directions for fresh adjudication or decision, as the case may be, in the following cases, namely:-



- Where an order or decision has been passed without following the principles of natural justice; or
- Where no order or decision has been passed after reassessment under section 17; or
- Where an order of refund under section 27 has been issued by crediting the amount to Fund without recording any finding on the evidence produced by the applicant.
- Hence Commissioner (Appeal) can remand the case *de-novo* with specified circumstances mentioned above.

### **(3) Order for enhancing penalty or fine**

An order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proper order.

Where the Commissioner (Appeal) is of the opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order shall be passed unless the appellant is given notice within the time limit specified in section 28 to show cause against the proposed order. The order of the Commissioner (Appeal) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

### **(4) Time limit for disposal of appeal:**

The Commissioner (Appeal) shall where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed. On the disposal of the appeal, the Commissioner (Appeal) shall communicate the order passed by him to the Appellant, the adjudicating authority, the Principal Chief Commissioner/Commissioner of Customs.

## **APPELLATE TRIBUNAL (SECTION 129)**

The Central Government has constituted the Appellate Tribunal called as the **Customs, Excise and Service Tax Appellate Tribunal (CESTAT)** under section 129(1) of the Act. It consists of judicial and technical members to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act. After introduction of GST, the Central GST Act seeks to constitute a "GST Appellate Tribunal". However CESTAT would continue to function to deal with customs disputes and old disputes under excise and service tax.



**APPEAL TO THE APPELLATE TRIBUNAL (SECTION 129A)**

*Second stage of appeal is appeal before Appellate Tribunal. Section 129A of the Act*

*Provides details about which orders are appealable and which are not appealable to the Appellate Tribunal.*

**(1) Appealable orders:**

- Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-
- A decision or order passed by the Principal Commissioner/ Commissioner of Customs as an adjudicating authority.
- An order passed by the Commissioner (Appeal) under section 128A;
- An order passed by the Board or the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day;
- An order passed by the Board or the Commissioner of Customs, either before or after the appointed day, under section 130, as it stood immediately before that day:

**(2) Non appealable orders:**

*Following orders are not appealable and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) above, if such order relates to, -*

- Any goods imported or exported as baggage;
- Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
- Payment of drawback as provided in Chapter X, and the rules made there under.
- However, the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where -
- The value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or
- In any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- The amount of fine or penalty determined by such order, does not exceed Two Lakh Rupees.

**(3) Limitation period for filing appeal before Appellate Tribunal:**

- Period of limitation for filing appeal before CESTAT is three months from the date of communication of order. On receipt of notice of appeal, the respondent may file a memorandum of cross objection within 45 days of receipt of notice in Form CA-4. In the memorandum of cross objections, the respondent can agitate against any part of the order appeal against and such cross objection are disposed of by the Tribunal as if it were an appeal.
- The Tribunal may condone the delay and admit appeal or permit the filing of a memorandum of cross-objections after the expiry of this period, if he is satisfied that there was sufficient cause for not presenting the appeal within the limitation period.
- In case of *Harsh Anil Vasant Vs. C.C. New Delhi 2014(1) ECS (228) (Tri-Del)*, the Appellate Tribunal held that ***"merely stating that the appellant received the impugned order late for reasons attributable to him, he is not absolved of his obligation to adhere to the limitation prescribed by law. Reasons for delay explained must be acceptable to law. Hence application for condonation of delay is fails to succeed."***
- In case of *Thakker Shipping Pvt. Ltd. Vs. Commissioner of Customs (General) 2012 (285) ELT 321 (SC)*, it was held that ***Tribunal is empowered to condone the delay in filing an application consequent to review by Committee of Chief Commissioners on being satisfied about existence of sufficient cause.*** This judgment was reiterated in case of *Hongo India Pvt. Ltd. Vs. Commissioner of Customs 2009 (236) ELT 417 (SC)*.

**COMMITTEE OF PRINCIPAL COMMISSIONER/ COMMISSIONER OF CUSTOMS (SECTION 129A)**

- The Board may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Act. Every Committee constituted under this clause shall consist of two Principal Chief Commissioners/ Chief Commissioner of Customs or two Principal Commissioners/ Commissioner of Customs, as the case may be. Such Committee of Principal Commissioners/ Commissioner of Customs may, if it is of opinion that an order passed by the Commissioner (Appeal) under section 128 or section 128A, is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order.
- Where the Committee of Principal Commissioner/Commissioners of Customs differs in its opinion regarding the appeal against the order of the Commissioner (Appeal), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner/ Chief Commissioner of

- Customs, who shall, after considering the facts of the order, if is of the opinion that the order passed by the
- Commissioner (Appeal) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.
- For the purposes of this section, the term "jurisdictional Principal Chief Commissioner/ Chief Commissioner" means the Principal Chief Commissioner/ Chief Commissioner of Customs, having jurisdiction over the adjudicating authority in the matter."

### **FORM AND FEES FOR FILING APPEAL**

**An appeal to the Appellate Tribunal shall be filed in Form CA-3 under section 129A (1) and in Form CA-5 under section 129A (2). Fees for filing appeal to the Appellate Tribunal is as under-**

Amount of duty, interest demanded and penalty levied	Amount of fees for filing Appeal
Less than or equal to ` 500000/-	1000/-
More than ` 500000/- but not exceeding ` 5000000/-	5000/-
More than ` 5000000/-	10000/-

- For every application made before the Appellate Tribunal in an appeal for grant of stay or for rectification of mistake or for any other purpose, or for restoration of an appeal or an application, fees of ` 500/- is prescribed under sub-section (7) of section 129A.
- No such fees shall be payable in the case of an appeal preferred by the Principal Commissioner/ Commissioner of Customs and in case of filing memorandum of cross objection. Also no fees shall be payable in the case of an application filed by or on behalf of the Principal Commissioner/ Commissioner of Customs.

### **ORDER OF APPELLATE TRIBUNAL (SECTION 129B)**

The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against. The Tribunal may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

#### **(1) Opportunity of being heard:**

The Appellate Tribunal may pass such orders only after giving the parties to the appeal an opportunity of being heard and till that time, the Appellate Tribunal may adjourn the hearing for the reasons to be recorded in writing. However no such adjournment shall be granted to a party for more than three times during hearing of the appeal.

**(2) Rectification of mistake:**

With a view to rectifying any mistake apparent from the record, the Appellate Tribunal may, at any time within six months from the date of the order, amend any order passed by it and shall make such amendments if the mistake is brought to its notice by the Principal Commissioner/ Commissioner of Customs or the other party to the appeal. An amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

**(3) Time limit for disposal of appeal:**

Every appeal shall be decided by the Appellate Tribunal within a period of three years from the date on which such appeal is filed, if possible to do so.

**(4) Finality of order:**

- The Appellate Tribunal shall send a copy of every order passed under this section to the Principal Commissioner/ Commissioner of Customs and the other party to the appeal.
- Save as otherwise provided in section 130 or section 130E, orders passed by the Appellate Tribunal on appeal shall be final.

**Illustration 1**

For which orders of CESTAT, an appeal cannot be filed before High Court or Supreme Court?

**Solution**

- 1) As decided in landmark judgment of Steel Authority of India Ltd. Vs. Designated Authority, Civil Appeal No. 241 of 2017, Supreme Court was held that "while admitting appeal under section 130E of the Act, following conditions must be satisfied:
- 2) The question raised or arising must have a direct and/or proximate nexus to the question of determination of the applicable rate of duty or to the determination of the value of the goods for the purposes of assessment of duty. This is a sine qua non for the admission of the appeal before this Court under Section 130E of the Act.

- 3) The question raised must involve a substantial question of law which has not been answered or, on which, there is a conflict of decisions necessitating a resolution.
- 4) If the tribunal, on consideration of the material and relevant facts, had arrived at a conclusion which is a possible conclusion, the same must be allowed to rest even if this Court is inclined to take another view of the matter.
- 5) The tribunal had acted in gross violation of the procedure or principles of natural justice occasioning a failure of justice.
- 6) If the Tribunal has acted bona fide with the natural justice by a speaking order, even if superior Court feels that another view is possible, that is no ground for substitution of that view in exercise of power under clause (b) of Section 130E of the Act."
- 7) Hence, order of CESTAT is not appealable, if the same was passed considering all material facts. Such orders are considered as Final order.

#### **PROCEDURE OF APPELLATE TRIBUNAL (SECTION 129C)**

- The powers and functions of the Appellate Tribunal are to be exercised and discharged by Benches constituted by the President from amongst the members of the Appellate Tribunal. Subject to the provisions contained in sub-section (4), a Bench shall consist of one judicial member and one technical member.
- However, The President or any other member of the Appellate Tribunal authorized in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where -
- The value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or
- In any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- The amount of fine or penalty involved does not exceed Fifty Lakh rupees.

**DIFFERENCE OF OPINION OF MEMBERS**

- If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority. But if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate.
- Tribunal who have heard the case, including those who first heard it.
- Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

***Powers of Committee of Principal Chief Commissioners/ Chief Commissioners of Customs or Principal Commissioner/ Commissioner of Customs to pass certain orders (Section 129D).***

**REVIEW BY PRINCIPAL CHIEF COMMISSIONER/COMMISSIONER OF CUSTOMS**

- The order of Commissioner of Customs is examined for legality and propriety of such order by the Committee of Principal Chief Commissioners/ Chief Commissioners of Customs. They are empowered to call for and examine the record of any proceeding in which a Principal Commissioners/ Commissioners of Customs as an adjudicating authority has passed any decision or order under this Act.
- The Committee of Principal Chief Commissioners/ Commissioners may by order, direct such Principal Commissioner/ Commissioner or any other Principal Commissioner/ Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by it.

**DIFFERENCE IN OPINION**

- In case of difference in opinion in Committee of Principal Chief Commissioner/ Chief Commissioners of Customs in relation to the legality or propriety of the decision or order of the Principal Commissioner/ Commissioner of
- Customs, it shall make a reference to the Board stating the point or points on which it differs. If after considering the facts of the decision or order passed by the Principal Commissioner/ Commissioner of Customs, the Board is of the opinion that the decision or order passed by the Commissioner of Customs is not legal or proper, it may by order direct such Principal Commissioner/ Commissioner or any other Principal



Commissioner/ Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order.

**Limitation period for filing application before revision authority:**

- Time limit for filing appeal before revision authority is three months from the date of communication of the decision or order of the adjudicating authority. The time period available to the Principal Commissioner/ Commissioner of Customs or the adjudicating authority to make an application to the Appellate Tribunal or to the Commissioner (Appeal) in one month from the date of communication of the order of the Committee of the Principal Chief Commissioner/Chief Commissioner or the Principal Commissioner/ Commissioner.
- Such application shall be heard by the Appellate Tribunal or the Commissioner (Appeal), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding Appeal, including the provisions of sub-section (4) of section 129A shall, so far as may be, apply to such application.

**REVISION BY CENTRAL GOVERNMENT (SECTION 129DD)**

The Central Government may, on the application of any person aggrieved by any order passed under section 128A, annul or modify such order, where the order is of the nature referred to in the first proviso to sub-section (1) Of section 129A. The Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees. The Principal Commissioner/ Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeal) under section 128A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

**Limitation period for filing application:**

The time period for filing such application is three months from the date of communication to the applicant the order against which the application is made. However, if the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.



**Fees for filing application:**

The revision application is to be in Form No. CA-8 and shall be filed in duplicate and shall be accompanied by a fee of, -

Amount of duty, interest demanded, fine or penalty levied	Amount Of Fees For Filing Appeal
Less than or equal to ' 100000/-	'200/-
More than ' 100000/-	' 1000/-

No such fee shall be payable in the case of an application preferred by Principal Commissioner/ Commissioner of Customs.

**Order**

The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section-

In any case in which an order passed under section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and

In any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

Moreover, where the Central Government is of opinion that there is short levy or non-levy of duty, no order levying or enhancing the duty shall be made unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28.

**DEPOSIT, PENDING APPEAL OF DUTY AND INTEREST DEMANDED OR PENALTY LEVIED (SECTION 129E)**

Section 129E of the Customs Act, 1962 deals with pre-deposit of certain percentage of duty demanded before filing appeal. This section provides as under:

**(1) Pre-deposit for appeal before Commissioner (Appeal):**

The Commissioner (Appeal) shall not entertain an appeal under section 128(1) unless the appellant has deposited 7.5% of the duty, where the duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Principal Commissioner/ Commissioner of Customs.

**(2) Pre-deposit for appeal before the Appellate Tribunal:**

The Tribunal shall not entertain an appeal against the decision or order passed under section 129A (1)(a) by the Principal Commissioner/ Commissioner of Customs unless the appellant has deposited 7.5% of the duty, where the duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute in pursuance of a decision or order appealed against.

The Tribunal shall not entertain an appeal against the decision or order passed under section 129A (1)(b) by the Commissioner (appeal) unless the appellant has deposited 10% of the duty, where the duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute in pursuance of a decision or order appealed against.

However, the amount of pre-deposit shall not exceed Rs. 10 Crore.

**Quantum of pre-deposit:-**

In the event of appeal against the order of Commissioner (Appeal) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeal). This need not be the same as the amount of duty demanded or penalty imposed the Commissioner (Appeal) in the order in original in the said case.

Moreover, payment made during the course of investigation/audit, prior to the date of filing appeal, to the extent of 7.5% or 10%, subject to the limit of Rs. 10 Crore can be considered to be made towards fulfillment of stipulation under section 129E of the Act. Here date of filing appeal will be deemed to be the date of deposit of such payments. But any shortfall from the amount stipulated in this section has to be paid before filing the appeal.

In case when a penalty alone is in dispute and the penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed. In case of any short payment or non-payment of the amount of the pre-deposit, the appeal is liable for rejection

**Illustration 2**

Mr. A wants to file appeal before the Tribunal against the order of Commissioner (appeal), which confirmed the duty demand of Rs.3000000/- and penalty imposed of Rs.500000/-. Compute the amount of pre-deposit required to be made.

**Solution**

As per section 129E of the Act, quantum of pre-deposit for an appeal filed before CESTAT against order passed by the Commissioner (appeal) is 10% of disputed amount when both duty and penalty are in dispute. Hence amount of pre-deposit will be Rs.300000/-.

**Recovery of balance amount**

For recovery of balance amount deposited, no coercive measure shall be taken during the pendency of appeal where the party/assessee shows to the jurisdictional authorities the proof of payment of pre-deposit (7.5%/10% and copy of the appeal memo. Recovery action can be initiated only after disposal of the case by the Commissioner (Appeal Tribunal in favour of the department unless order of the Commissioner (Appeal) or CESTAT is stayed by authority/higher court. The amount to be recovered will include interest calculated from date duty became payable till the date of payment.

**Refund of pre-deposit**

In case of refund of pre-deposit, it is pertinent to note that pre-deposit for filing appeal is not payment of duty.

Hence, refund of pre-deposit need not to be subjected to the process of refund of duty under section 27 of the Customs Act, 1962. Therefore once the appeal is decided in favour of assessee, he can apply for refund of pre-deposit. Such refund with interest shall be paid to the appellant within 15 days of the receipt of letter of the appellant seeking refund, irrespective of whether order of appellate authority is proposed to be challenged by the department or not. In the event of a remand refund of pre-deposit shall be payable along with interest. The refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party.

**INTEREST ON DELAYED REFUND OF AMOUNT DEPOSITED UNDER SECTION 129EE**

If an amount deposited by the appellant under section 129E is required to be refunded consequent to the order of the Appellant Authority and the amount is not refunded within three months from the date of communication of the order of the appellate authority, the interest till the date of refund of such amount is to be paid to the

appellant at such rate, not below 5% and not exceeding 36% per annum as is fixed by the Central Government by notification in official gazette.

### **APPEAL TO HIGH COURT (SECTION 130)**

- 1) Third stage of appeal is appeal to high court. An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, which is not relating to determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment, if the High Court is satisfied that the case involves a substantial question of law. Where the issue involved is related to determination of rate of duty or value for the purpose of assessment, the appeal lies to the Supreme Court.
- 2) The Principal Commissioner/ Commissioner of Customs or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal shall be -
- 3) Filed within one hundred and eighty days from the date on which the order appealed against is received by the Principal Commissioner/ Commissioner of Customs or the other party;
- 4) Accompanied by a fee of two hundred rupees where such appeal is filed by the other party;
- 5) In the form of a memorandum of appeal precisely stating therein the substantial question of law involved

#### **Limitation period for filing the appeal to High Court:**

Period of limitation for filing appeal to High Court is One Hundred and Eighty days from the date when the order being appealed against was received by the Principal Commissioner/Commissioner of Customs. The High Court may admit an appeal after the expiry of the period of one hundred and eighty days, if it is satisfied that there was sufficient cause for not filing the same within that period.

#### **Formulation of question:**

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: However, the High Court may hear any other question of law not formulated by it, if it is satisfied that the case involves such question.

**Delivery of judgment:**

- The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit. The High Court may determine any issue which -
- Has not been determined by the Appellate Tribunal; or
- Has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law.
- When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges. Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.
- The provisions of Civil Procedure Code, 1908 relating to Appeal to the High Court shall as far as may be apply in the case of Appeal under this section.

**Illustration 3**

*Whether High court may decide question of law not formulated?*

**Solution**

The High Court shall hear only on question of law formulated. However, the High Court may hear any other question of law not formulated by it, if it is satisfied that the case involves such question. The High court may decide question of law formulated.

**POWER OF HIGH COURT OR SUPREME COURT TO REQUIRE STATEMENT TO BE AMENDED (SECTION 130B)**

If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

**DECISION OF HIGH COURT OR SUPREME COURT ON THE CASE STATED (SECTION 130D)**

- 1) The High Court or the Supreme Court hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

- 2) Where the High Court delivers a judgment in an appeal filed before it, effect shall be given to the order passed on the appeal by the proper officer on the basis of a certified copy of the judgment.
- 3) The costs of any reference to the High Court or an appeal to the High Court or the Supreme Court as the case may be which shall not include the fee for making the reference shall be in the discretion of the Court.

### **APPEAL TO SUPREME COURT (SECTION 130E)**

*Two types of orders are appealable to the Supreme Court, which are as under:*

- 1) Any judgment of the High Court delivered in an appeal made under section 130; or a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003; or a reference made under section 130A, in respect of order of CESTAT received by him before 1st July, 2003, provided the High Court certifies on its own motion or on an oral application made by or on behalf of the party aggrieved, it to be a fit one for appeal to the Supreme Court; or
- 2) Civil application against any order passed by the Tribunal relating, among other things to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment.
- 3) Hence, orders of Appellate Tribunal related to any question other than those related to rate of duty or value of goods is not directly appealable to Supreme Court.

### **Limitation period for filing appeal to Supreme Court:**

Time limit for filing appeal to Supreme Court is sixty days from the date of receipt of order.

### **HEARING BEFORE SUPREME COURT (SECTION 130F)**

- 1) The provisions of the Code of Civil Procedure, 1908 relating to Appeal to the Supreme Court shall, so far as may be, apply in the case of Appeal under section 130E as they apply in the case of Appeal from decrees of a High Court: However, these provisions shall not affect the provisions of section 130D or section 131.
- 2) The costs of the appeal shall be in the discretion of the Supreme Court. Moreover, where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 130D in the case of a judgment of the High Court.



**EXCLUSION OF TIME TAKEN FOR COPY (SECTION 131A)**

In computing the period of limitation specified for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

**APPEAL NOT TO BE FILED IN CERTAIN CASES (SECTION 131BA)**

**Monetary limits for filing appeal:** The Board may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Principal Commissioner/ Commissioner of Customs under the provisions of this Chapter. The monetary limit is calculated considering amount of duty with or with penalty and interest. The monetary limit fixed, below which an appeal shall not be filed by the Department in CESTAT, High Court and Supreme Court is as under:

Appellate Authority	Monetary Limit (Rs.)
CESTAT	20 Lakhs
High Courts	1500000 to 50 Lakhs
Supreme Court	1 Crore

These monetary limits are also applicable for redemption fine and refund. Where both the penalty and redemption fine are imposed, the monetary limit is calculated considering both the amount together.

**Applicability of monetary limit in case of adverse judgments:**

- 1) In case of adverse judgments relating to following, it should be contested irrespective of the amount involved:
- 2) Where the constitutional validity of the provisions of an Act or Rule is under challenge;
- 3) Where notification/instruction/order/circular has been held illegal or ultra vires;
- 4) Where audit objection on the issue involved in a case has been accepted by the department.
- 5) Where the Principal Commissioner/ Commissioner of Customs is not able to file an appeal, application, revision or reference against any decision or order on account of such monetary limit, it shall not preclude such Principal Commissioner/ Commissioner



of Customs from filing any appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

- 6) No person, being a party in appeal, application, revision or reference shall contend that the Principal Commissioner/ Commissioner of Customs have acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.
- 7) The Commissioner (Appeal) or The Appellate Tribunal or court hearing an appeal, application, revision or reference shall have regard to the circumstances under which the appeal, application, revision or reference was not filed by the Principal Commissioner/ Commissioner of Customs in pursuance of orders or instructions or directions issued under this section.

#### **Illustration 4**

*Whether monetary limit for filing appeal is applicable in case of refund of import duty?*

#### **Solution**

Monetary limit fixed for filing appeal is also applicable to refund of customs duty.

#### **Illustration 5**

*If the appellate Tribunal has disposes more than one appeal in a common order and where the department being aggrieved is required to file more than one appeal against the said order, whether monetary limit is applicable in such circumstances?*

#### **Solution**

In respect of Composite order which disposes off more than one appeal, every appeal will be considered as a "case" and it should be subjected to prescribed monetary limit. Hence if the Tribunal has If the appellate Tribunal has disposes more than one appeal in a common order and where the department being aggrieved is required to file more than one appeal against the said order, then each appeal is subjected to prescribed monetary limit.

#### **Illustration 6**

*If the appellant has filed appeal before wrong authority, whether principle of limitation as per section 14 of Limitation Act will be applicable?*

#### **Solution**

If the appeal is filed before wrong authority, time taken to pursue the appeal in wrong authority will be excluded. But if appeal is filed before proper authority, principle of limitation as per section 14 of the Limitation Act will be applicable, even if provisions of section 14 are not applicable.



## CHAPTER 16: MISCELLANEOUS

### SECTION 142 RECOVERY OF SUMS DUE TO GOVERNMENT

*Where any sum payable by any person under this act including the amount required to be paid to the credit of the central government is not paid,*

- (a) The proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs; or
- (b) AC or DC of customs may recover or may require any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the ac or dc such other officer of customs ;or
- (c) If the amount cannot be recovered from such person in the manner provided as above.
- 1) The AC or DC of customs may prepare a certificate signed by him specifying the amount due from the such person and send it to the collector of the district in which such person owns any property or resides or carries on his business and the said collector on receipt of such certificate shall processed to recover from such person the amount specified there under as if it were an arrear of land revenue; or
- 2) The proper officer may,
- On an authorisation by commissioner of customs and
  - In accordance with the rules made in this behalf,  
Distain any moveable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid and is case, any part of the said amount payable or of the coast of the distress or keeping of the property, remains unpaid for a period of 30 days next after any such distress, may cause the said property to be sold and with the proceed of such sales, may satisfy the amount payable and the coasts and including coast of sale remaining unpaid and shall render the surplus, if any, to such person.
  - The proper may by a notice in writing, require any other person from whom money is due to such person or may become due to such person or who holds or may subsequently hold money for or account of such person, to pay to the credit of the central government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice not being not before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
  - Every person to whom the notice is issued under this section shall be bound to comply with such notice and in particular where any such notice is issued to post office banking company or on ensure it shall not be necessary to produce any passbook deposit receipt policy or any

other document for the purpose of any entry endorsement or the like being made before the payment is made notwithstanding any rule practice or requirement to the contrary

- In case the person to whom or notice under this section has been issued fails to make the payment in pursuance Thereof to the central government he shall be Deemed to be a defaulter in respect of the

**Amount specified in the notice and all the consequence of this chapter shall follow -**

Where the terms of any Bond or other instrument executed under this act or any rules or regulations made there under provided that any amount due under such instrument maybe recovered in the manner laid down in sub section 1 the amount May without prejudice to any other mode of recovery be recovered in accordance with the provisions of that subsection.

**Provided that** where the person hereinafter referred to as predecessor from whom the duty or any other sums of any kind as specified in this section is recoverable or due,

- Transfers or otherwise disposes of his business or trade in whole or in part or
- Effects any change in the ownership their of;

In consequence of which he success in such a business or trade by any other person, all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles

In the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs after obtaining written approval from the Commissioner of Central Excise, for the purpose of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.

**SECTION 142A: LIABILITY UNDER ACT TO BE FIRST CHARGE**

Notwithstanding anything to the contrary contained in any Central Act or state act any amount of Duty penalty interest or any other sum payable buy an assesses 529 a of the Companies Act 1956 the recovery of debts due to banks and Financial Institutions act 1993 and the securitisation and reconstruction of financial assets and the enforcement of security interest act 2002 be the first charge on the property of the assessee or the person as the case may be.

**POWER TO ALLOW IMPORT OR EXPORT ON EXECUTION OF BONDS IN CERTAIN CASES [SECTION 143]**

***In the importer exporter is unable to fulfill the conditions for import export the AC or DC customs can permit clearance of imported goods Ore export subject to the following:***

1. The AC or DC of customs can grant leave for such import or export or clearance of goods if he is satisfied that having regard to the circumstances.
2. A bond with such surety or security and subject to such conditions as the AC or DC approves. On full-fillment of conditions within the time specified in the bond the AC or DC of customs shall cancel the bond as discharged in full and shell on demand deliver it so cancelled to the person who has executed or who is Entitled to receive it.If the conditions are not fulfilled within the time specified in the bond the AC or DC of customs shall without prejudice to any

other action that may be taken under this act or any other law for the time being in force be entitled to proceed upon the bond in accordance with law.

### **SECTION 143A: A POWER TO SIMPLIFY OR PROVIDE DIFFERENT PROCEDURE, ETC, TO FACILITATE TRADE**

*Notwithstanding anything contained in any other provision of this act the board may for the purpose of facilitation of trade take such measures or prescribe separate procedure or documentation for a class of importers and exporters or for categories of goods or on the basis of the modes of transport of goods in order to-*

- 1) Maintain transparency in the import and export documentation or;
- 2) Expedite clearance or release of goods entered for import or export or;
- 3) Reduce the transaction cost of clearance of importing or exporting goods or;
- 4) Maintain balance between customs control and facilitation of legitimate trade.

### **SECTION 144: POWER TO TAKE SAMPLES**

- 1) The proper officer May,
  - On the entry or clearance of any goods or
  - At any time while such goods are being passed through the customs area take samples of such goods in the presence of the owner thereof for examination or testing or for ascertaining the value thereof for any other purposes of this act
- 2) After the purpose of which a sample was taken is carried out search sample shall if practicable be restored to the owner but if the owner fails to take delivery of the sample within 3 months of the date on which the sample was taken it may be disposed of in such manner as the Commissioner of customs may direct.
- 3) No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof if such duty amounts to 5 rupees or more.

### **SECTION 146: CUSTOM BROKER TO BE LICENSED**

1. No person shall carry on business as an agent relating to the entry or departure of goods at any customs station unless such person holds licence granted in this behalf in accordance with the regulations
2. The board may make regulations for the purpose of carrying out the provisions of this section and in particular such regulations may provide for
  - The authority by which a licence may be granted under this section and the period of validity of any such licence;
  - The form of the licence and the fees payable therefore;
  - The qualification of person who may apply for a licence and the qualifications of persons to be employed by a licence to assist him in this work as agent;
  - The restrictions and conditions (including the furnishing of security by the licence) subject to which a licence may be granted;

- The circumstances in which a licence may be suspended or revoke; and
- The appears if any against an order of suspension or revocation of a licence and the period within which such appears shall be filed.

### **SECTION 146A: APPEARANCE BY AUTHORISED REPRESENTATIVE**

*Any person who is entitled required to appear before-*

- An officer of customs or
- The appellate Tribunal

In connection with any proceedings under this act may appear by an authorised representative but in case when it required under section 108 to attend personally for examination on oath or affirmation then such person required to appear personally.

*For the purpose of this section authorised representative means a person authorised by the person to appear on his behalf being*

- 1) He is relative or regular employee or
- 2) a customs house agent licence under section 146 or
- 3) any legal practitioner who is Entitled to practice in any Civil Court in India or
- 4) any person who has acquired such qualifications as the central government may specify by rules made in this behalf.

### **DISQUALIFICATION**

- 1) Person who has been dismissed are removed from government service or
- 2) Person who is convicted of an offence connected with any proceeding under this act the central excise and salt Act 1944 or
- 3) In insolvent person cannot appear till insolvency continue or
- 4) A legal practitioner found guilty of misconduct in this professional capacity.

### **SECTION 147: LIABILITY OF PRINCIPAL AND AGENT**

- (a) Section 147 stipulates that anything required to be done by the owner importer exporter of any goods can be done by his agent subsection 1 however the owner importer exporter shall be liable for all the act of his agent [sub-section 2].
- (b) Further search authorised agent will without prejudice to the liability of the owner importer exporter be deemed to be the owner importer exporter of such goods for such purposes including liability therefore under this act [sub-section 3].
- (c) However where any duty is not short lived or erroneously refunded on account of reasons not involving any wilful act negligence or default of the agent such duty will not be recovered from the agent unless the same cannot be recovered from the owner importer exporter.



**SECTION 151A: INSTRUCTIONS TO OFFICERS OF CUSTOMS [BOARD CIRCULAR]**

*The board may If It consider it necessary or expedient so to do for the purpose of-*

- Uniformity in the classification of goods or
- With respect to the levy of Duty thereon or
- For the implementation of any other provisions of this act or of any other law for the time being in force in so far as they relate to any prohibition restriction or procedure for import or export of goods;

Issue search orders instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employee in the execution of this act shall observe and follow search orders instructions and directions of the board.

**Provided** that no such orders instructions are directions shall be issued

- 1) So as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner or;
- 2) So as to interfere with the discretion of the Commissioner of customs (appeals) in the exercise of his appellate function.

**SECTION 151B: RECIPROCAL ARRANGEMENT FOR EXCHANGE OF INFORMATION FACILITATING TRADE**

- (a) The central government may enter into agreement or any other arrangement with the Government of any country outside India or with such competent authority of that country as it deemed fit for facilitation of trade in forcing the provisions of this act and exchange of information for trade facilitation effective risk analysis verification of compliance and presentation combating and investigation of offences Under The provisions of this act or under the corresponding laws in force in that country;
- (b) The central government may by notification direct that the provisions of this section shall apply to the contracting state with which reciprocal agreement or arrangements have been made subject to such conditions exceptions are qualifications as may be specified in that notification;
- (c) Subject to the provisions of subsection to the information received under subsection 1 may also be used as evidence in investigations and proceedings under this act;
- (d) Where the central government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases the board shall specify the procedure for such exchange the conditions subject to which such exchanges shall be made and designation of the person through home such information shall be exchanged;
- (e) Notwithstanding anything contained in subsection 1 aur sab section 2 subsection 3 anything done or any action taken or purported to have been done or taken in pursuance to any agreement entered into or any other agreement made by the central government prior to the date on which the finance bill 2018 received the assent of the president shall be deemed to have been done or taken under the provisions of this section.



**Explanation for the purposes of this section the expressions-**

- 1) Contracting state means any country outside India in respect of which agreement or arrangements have been made by the central government with the government or authority of such country through an agreement or otherwise;
- 2) Corresponding law means any law in force in the contracting state corresponding to any of the provisions of this act or dealing with offences in that country corresponding to any of the offences under this act.

**SECTION 153: MODES FOR SERVICE OF NOTICE ORDER ETC.**

The date of service of an order or a communication containing a decision is of vital importance in case the aggrieved party desires to file an appeal the time limit allowed for appeal normally runs from the date of receipt of the communication containing the impugned decision by the aggrieved person there are circumstances where it is not effectively possible to ensure that such communications are received by the concerned party there are other circumstances where disputes arise about the actual date of the receipt of communication this two problems have necessitated a uniform procedure for dispatch and service of Orders decisions summons and other communication issued under the customs Act Section 153 provides the specific mode of service in this regard which is reproduced below.

***An order decision summons notice or any other communication under this act or the rules made thereunder may be served in any of the following modes namely-***

- (a) By giving or tendering it directly to the addresses or imported or exporter or his customs broker or his authorised representative including employee advocate or any other person or to any adult member of his family receding with him
- (b) Buy a registered post or Speed Post or courier with acknowledgement due deliver to the person for whom it is issued or to his authorised representative if any at his last known place of business or residence
- (c) By sending it to the email address as provided by the person to whom it is issued or to the email address available in any official correspondence of such person
- (d) By publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have decided or carried on business or
- (e) By affixing in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason then buy a fixing a copy thereof on the notice board of the office or uploading on the official website if any

Every order decision summons notice or any communication shall be Deemed to have been served on the date on which it is ended or published or a copy there of a fixed or uploaded in the prescribed manner.

Further when such order decision summons notice or any communication is sent by registered post or speed post it shall be Deemed to have been received by the addresses at the expiry of the period normally taken by such post in transits unless the country is proved.

## FOREIGN TRADE POLICY

### INTRODUCTION

FTP is a policy document released by Central Govt, Ministry of Commerce and Industry. It is a 5 year policy with revision every year by 1st April.

DGFT (Director General, Foreign Trade) is the authority to implement the policy.

**It contains:**

The statement The Policy, Procedures, norms, classification of goods etc.

**Present Policy is from 2015 to 2020 updated as on 5-12-2017**

### FOCUS AREAS IN THE NEW POLICY

- Thrust on 'make in India' vision of The Prime Minister
- Ease of doing business & trade facilitation
- Paperless working through e-governance
- Encouraging ecommerce in specified products
- More supportive measures to EOUs, STPs, EHTPs, SEZs etc.
- Resolution of quality complaints and trade disputes
- Change of Nomenclature of Status Holders.
- Simplification and integration of Reward schemes.

### WHAT IS FOREIGN TRADE POLICY?

It is a set of guidelines and instructions on matters relating to imports into and exports from India. It contains various policy decisions affecting foreign trade. Especially, it contains export promotion measures and procedures involved in foreign trade.

It is prepared and announced by Ministry Of Commerce & Industry under Section 5 of Foreign Trade (Development & Regulation ) Act, 1992. **The objective of FT ( D&R) Act, 1992 is to facilitate imports and augment exports.** This Act replaced Imports and Exports (Control ) Act, 1947. DGFT is the main governing body under the Act of 1992.

### EVOLUTION AND DEVELOPMENT OF INDIA'S FOREIGN TRADE

- The year 1950 was the beginning for the planned development of foreign trade in India. Main emphasis was import substitution. That means import raw material, components etc. and makes goods in India instead of importing their finished goods.
- Total share of India in 1950 was 1.78% of world trade but it declined to 0.6% in 1995. In 2005, it rose to 1%. By 2008, the combined share of goods and services crossed 1.64%. The last 5 year FTP 2009-2014 aimed at doubling the share by 2020. The evolution of

foreign trade in India has been in a phased manner and various committees were appointed by Government of India to

- Increase exports
- Encourage foreign trade
- Ensure favourable balance of payments position.

## **BRIEF HISTORY AND BACKGROUND**

### **Committees and Recommendations:**

- In 1962, Government of India appointed a special EXIM Policy Committee to review the previous export/ import policies.
- 1978: P.C. Alexander Committee was appointed to review and recommend on exim policies and procedures. The committee recommended simplification of import licence procedures. The emphasis was to have shift from control to development.
- 1980: Tandon Committee: The committee suggested export strategies.

## **DEVELOPMENTS DURING 1978-82**

- Licensing functions were decentralized and powers of registration/ licencing authorities were enhanced.
- Export Processing Zones were set up to boost exports
- Export Oriented Units were set up under E.O.U Scheme.
- EXIM-Bank was set up in 1982 to takeover operations of International Financial wing of IDBI and to provide financial assistance to exporters and importers.
- **1984:** Abid Hussain Committee recommended long term FTP.
- **1985:** 3 year EXIM-Policy was introduced. Pass Book scheme was launched. A sincere attempt was made to implement the recommendations made by EXIM-Policy Review Committee.
- **1991-1996:** India's foreign trade policy had taken a drastic turn with the sweeping recommendations made by the Raja Chellaiah Committee. Government of India announced major reforms. During this period, unprecedented policy decisions were taken by government. It was a turning point for India. Trade was liberalized; import tariffs

reduced; rupee was devalued; quantitative restrictions were eliminated and a 5 year EXIM-Policy was announced for 1992-1997. Since then India has been on the growth track.

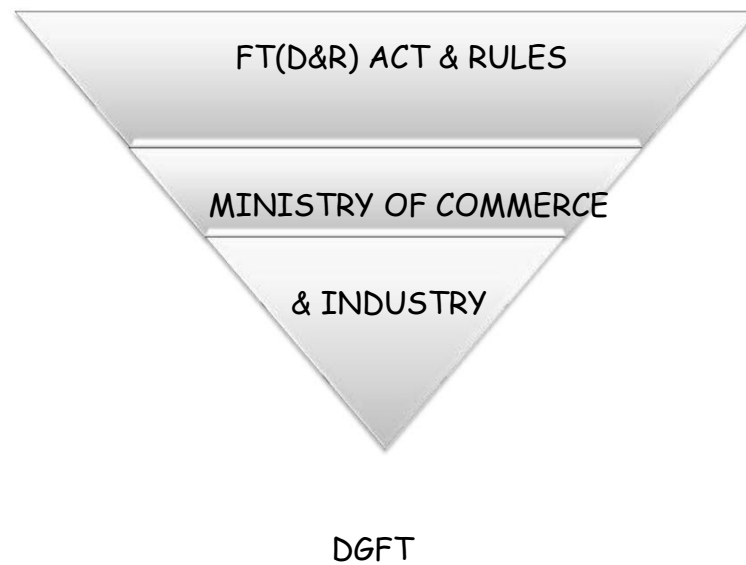
- The government has changed the name of EXIM-Policy to Foreign Trade Policy. First FTP was introduced with the changed name for the period 2004- 2009. India's exports cover about 7500 commodities to 190 plus countries. India imports around 6000 commodities from 140 countries. US and China have been our major trade partners.
- Though our balance of trade position is not favourable for most of the time, the balance of payments position has been consistently encouraging mainly because of foreign direct investments (FDIs) and deposits from NRIs. Forex reserves in India peaked to an all time high of 320 billion US Dollars by September 2, 2011.

**The last FTP 2009-2014 notified on 27<sup>th</sup> August, 2009 by Ministry Of Commerce & Industry set the following objectives:**

- To arrest and reverse the declining trend of exports
- To provide support especially to those sectors hit badly by recession.
- To double India's share in global trade by 2020.

#### **FOREIGN TRADE POLICY V. EXIM POLICY**

- With its new name, F.T.P has comprehensive coverage and is not restricted to export and import alone. It encompasses all areas of foreign trade. The first trade policy after the change of the name is F.T.P 2004-2009 which sets out the objectives as "Trade is not an end in itself but is a means to achieve economic growth and national development". Earlier under the Exim policy, the focus was on exports and imports. Now under the new F.T.Ps, the thrust is on greater economic activity and more employment generation.
- The latest F.T.P has been in force with effect from 1st April 2015 and will be upto 31st March, 2020. The objective is to double India's share in global trade by 2020

**ADMINISTRATION OF FTP:**

The Act authorises the Ministry to declare the Policy on foreign trade

The MOC & I announces the policy

The DGFT assists in formulating the policy and also implements the policy

**BRIEF OVERVIEW OF THE PROVISIONS OF THE FOREIGN TRADE (DEVELOPMENT & REGULATION) ACT, 1992****Introduction**

All public activities are governed by the laws of the country. Foreign trade is a very important activity which involves a variety of laws, policies and procedures. Foreign trade (Development & Regulation) Act, 1992 is the basic and fundamental law governing imports and exports. It lays down the frame work for conducting foreign trade.

The FTDRA was introduced in 1992 by an ordinance promulgated by the President of India and then enacted by Parliament as F.T. (D&R) Act, 1992. The Act replaced the earlier Act called "Import and Export (Control) Act, 1947". The scope of FTDRA is wider than the Act of 1947. Under that Act the emphasis was on control of import and export. But the present Act lays emphasis on promotion of foreign trade in goods as well as services. The objectives of the Act make it clear.

**Objectives of the Act :** The preamble of the Act States "An Act to provide for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from India and for matters connected therewith or incidental thereto"

It is quite obvious from the above that the Act provides for the mechanism for the development and regulation of foreign trade with the twin objectives of (i) facilitating imports, and (ii) increasing exports

**Scheme of the Act**

- The Act authorizes Central Govt. to issue orders to make provisions for development and regulation of foreign trade To prohibit, restrict or regulate import and export
- The central Govt. is also authorized to formulate and announce F.T.P by a notification in the official Gazette.
- The Central Govt. also has been given power to appoint the Director General, Foreign Trade DG (F.T.)
- The DG (F.T) is to advise the Central Govt. in the formulation of F.T.P and he is also responsible for carrying out the policy.
- It may be noted that D.G (F.T) acts under the control of Ministry of Commerce & Industry. Govt. of India.

**Contents of the Act in brief**

This is the main Act dealing with various aspects of foreign trade.

The Administration of the Act is in the hands of Commerce & Industry. The office of the DG (F.T) will assist the Ministry in achieving the objectives of the Act.

The Commerce Ministry Acts in coordination with Finance Ministry. A customs clearance, Tax Administration such as collection, remission and exemption of duties is the responsibility of Finance Ministry.

**FTDRA covers the following matters :**

- Formulation and Announcement of F.T.P: This is made by Commerce Ministry once in 5 years with annual reviews. The DG (F.T) is to prepare the policy document for implementation.
- IEC No: The Act specifies that every person intending to import or export goods or services must obtain Importer exporter code No. (IEC -No.) from D.G.F.T
- Authorization: The Act also provides for permission called license or authorization for import or export of certain goods specified in the F.T.P.
- The F.T.P has the list of restricted goods for which the permission from DG(F.T) is required.
- Power of Search & Seizure: The central Govt. has power to authorize certain persons to conduct search and seizure operations where any violation of the Act or F.T.P is detected
- Penalties: The Act provides for penalties extending upto 5 times the value of imported or exported goods as the case may be, if any contravention is made. The penalty may be compounded by the Adjudicating authority if the person admits the contravention voluntarily.
- Confiscation of goods, Conveyance etc.: For violation made under the Act, the goods and conveyance carrying the goods will also be confiscated. They may be released by confiscating authority on payment of redemption charges. The redemption charges are equivalent to market value of goods or conveyance as the case may be.
- It must be noted that the penalties under the Act are in addition to but not a substitute to any other penalties imposed for the same offence under other laws. For Example, customs Act also provides for penalties and confiscation of imported or exported goods.
- Rules, 1993: Central Govt. has made Rules called Foreign Trade (Regulation) Rules, 1993 to deal with the operational issues under the Act. They include Rules for issue of IEC No. license or authorization, fees, their refusal, cancellation or suspension and penalties for procedural violations
- Order & Appeals: Orders made against a person under the Act are applicable as specified below

Order passed by DGFT —————> Appeal to Central Govt.

Order passed by an officer Subordinate to DG FT —————> Appeal to DGFT



- To sum up, basic frame work of law relating to imports and exports is given under FTDR, 1992 with Rules,
- 1993. Govt. has been assigned the job of declaring F.T.P and it is done with the assistance of the office of DGFT.
- All procedural and administrative work will be handled by DGFT. The work has been decentralized by regional offices set up in important cities.

**The officer in-charge of the regional office is called 'Regional Authority' (R.A).**

Every person wishing to import or export must obtain IEC No. from DGFT office. In certain cases he may have to obtain license or authorization also. The Act and the Rules also provide for penalties and appeals against the orders.

**Procurement of IEC No:[Importer Exporter Code No]**

- An IEC is a 10-character alpha-numeric number allotted to a person that is mandatory for undertaking any export/import activities. With a view to maintain the unique identity of an entity (firm/company/LLP etc.), consequent upon introduction / implementation of GST, IEC will be equal to PAN and will be separately issued by DGFT based on an application.
- Application for obtaining IEC may be filed online in ANF 2A with applicable fees and submitted with digital signature.
- When an e-IEC is approved by the competent authority, applicant is informed through e-mail that a computer generated e-IEC is available on the DGFT website. By clicking on "Application Status" after having filled and submitted the requisite details in "Online IEC Application" webpage, applicant can view and print his e-IEC.
- The applicant may submit online application with the following details /documents (scanned copies to be submitted/ uploaded) along with the IEC application:
  - Digital photograph of the signatory applicant;
  - Copy of the PAN card of the business entity in whose name Import/Export would be done (Applicant individual in case of Proprietorship firms); Cancelled cheque bearing entity's pre-printed name or Bank certificate in prescribed format ANF-2A(I)
- For modification in IEC, applicants may submit online application through digital signature (Class-II or Class-III), by paying applicable fees and uploading requisite documents, corresponding to the changes sought. Detailed guidelines for applying for e-IEC is available at [http://dgft.gov.in/exim/2000/iec\\_anf/iecanf.htm](http://dgft.gov.in/exim/2000/iec_anf/iecanf.htm)
- No Export/Import without IEC:
- No export or import shall be made by any person without obtaining an IEC number unless specifically exempted.

**Export Promotion Councils:**

- The objective of setting up export promotion councils is to promote and develop exports from India. These are organizations of exporters. These play a very important role in helping and guiding exporters in exploring markets for the Indian products
- The councils seek to ensure quality products and services and enhance the image of Indian products as a brand.
- These EPCs are product specific, that means different EPCs are established for different products Such as gems and jewellery EPCs, Engineering EPCs.
- For some products like coffee, tea and tobacco, Boards have been established. These are also treated as EPCs for their respective products.
- EPCs are independent professional bodies established as non-profit organizations under Companies Act or
- Societies Registration Act, 1860 which may receive funds from Govt.
- These are monitored by DGFT Office and DGFT is authorized to issue instructions to these bodies on various matters pertaining to exports.
- A large number of EPCs are functioning in India under the supervision of MOC & Industry.

#### **Recognition of EPCs to function as Registering Authority for issue of RCMC**

- Export Promotion Councils (EPCs) are organizations of exporters, set up with the objective to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/ projects/services as given in Appendix 2T of AANF.
- EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership
- Certificate (RCMC) to its members. The criteria for EPCs to be recognized as Registering Authorities for issue of RCMC to its members are detailed in Para 2.92 of the Handbook of Procedures.

#### **Registration-cum-Membership Certificate (RCMC)**

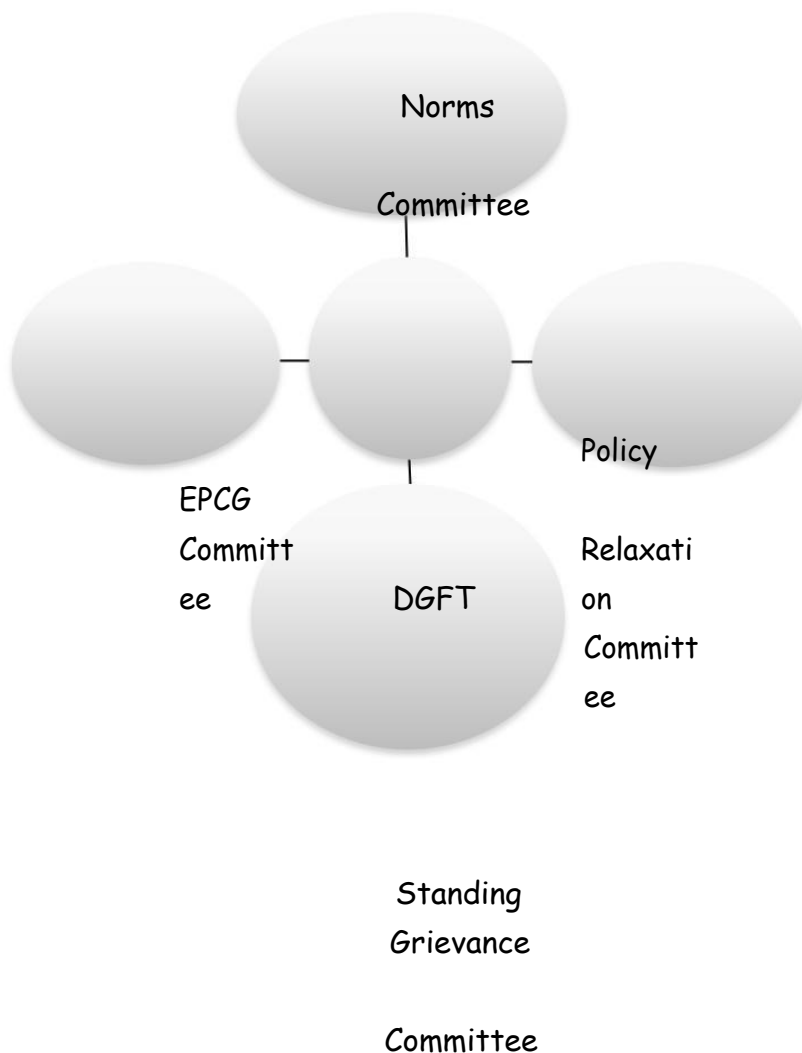
##### ***Any person, applying for:***

- An Authorisation to import/export (except items) listed as 'Restricted' items in ITC (HS) or Any other benefit or concession under FTP shall be required to furnish or upload on DGFT's website in the Importer Exporter Profile, the RCMC granted by competent authority in accordance with Procedures specified in Handbook of Procedures unless specifically exempted under FTP.

**Committees:**

Various committees are constituted under FTP to fulfill the objectives of the policy. These committees will function under the supervision and control of DGFT. Prominent among them are:

- Norms Committee
- EPCG Committee
- Policy Relaxation Committee
- Standing Grievance Committee

**CONTENTS OF F.T.P**

The F.T.P is published in 3 parts

The Policy Document.

Hand Book Of Procedures

ITC (H.S) Classification.

- The first part contains the basic policy in a broad sense with objectives, strategies to achieve those objectives and a brief review of the last policy.
- The second part is handbook of procedures which contains the detailed procedures for implementing the policy.
- The third part is ITC (HS) classification of goods of import and export.
- What is ITC (H.S) classification ? ITC stands for India Trade Classification and H.S stands for harmonized system. In other words, it is India Trade Classification (based on) harmonized system of coding adopted in India for goods imported or exported through customs.
- Customs department uses the coding system for goods. In India we use eight digit system of coding for goods.
- All goods for international trade are given section wise. There are 21 sections.
- For example, Section 1 contains Animals & Animal products; Section 2 vegetable products. These sections are further divided into chapters. These chapters contain goods with H.S. codes, description, export/import policy for the goods and type of restriction. Separate schedules are given for imported and export goods. Schedule 1 contains the lists of imported goods and schedule 2 has export goods. Status of goods will be denoted by specific alphabet in the schedules. As per the policy of the government, goods are categorized as follows :

**Free Goods:** Alphabet 'F' is used for this. These goods are allowed to be imported/ exported as the case may be freely without any license or authorization from DGFT.

**Prohibited Goods:** (P is used) these can not be imported at all.

**Restricted Goods:** (R): These 'R' category goods can be imported only with license / authorization.

**State Trading Goods (S or STE) :** These goods can be exported or imported only by or through state trading enterprises. (STEs) such as MMTC/ Indian Oil Corporation etc. If an importer or exporter still wants to deal directly, he has to get permission/authorization from DGFT.

### **EXPORT PROMOTION SCHEMES**

- The basic objective of export promotion schemes is to expand trade and economic activity to earn more foreign exchange.
- The means to achieve the ends is to augment exports by zero taxation system and also by introducing certain schemes to encourage more exports from the country.
- There are two types of set ups designed by the Govt;

- To set up units separately from the domestic units and offer sops/ incentives,
- To offer benefits generally to all units/ exporters on fulfillment of certain stipulations laid down by the govt. SEZs, EHTPs, STPs, EOUs etc. come under the first category. These units are exclusively under the control of a specified authority, say, development authority and their objective is to export goods and services exclusively. If they happen to deal with Indian territory, such transactions are called domestic tariff area (DTA) transactions and they are treated as imports and taxes are collected accordingly.
- Domestic units are given benefits of free imports/ imports at concessional rates with stipulations and conditions to be fulfilled. The following are schemes in this category:

**A. EXEMPTION & REMISSION SCHEMES (INPUTS):**

- These Schemes are export promotion schemes that enable free of Customs duties on import of inputs required for export production. There are two types of duty exemption schemes: Advance Authorisation Scheme and the
- Duty Free Import Authorisation (DFIA) Scheme. These schemes find place in Chapter 4 of the FTP
- Duty Remission Schemes enable post-export replenishment/remission of duty paid on inputs used in the export product. The only duty remission scheme in operation was Duty Entitlement PassBook (DEPB) scheme which was abolished with effect from 1<sup>st</sup>, October, 2011. At present Duty Drawback scheme is used for remission of import duties.
- Duty Exemption Schemes.
- The Duty Exemption schemes consist of the following:
- Advance Authorisation (AA) (which will include Advance Authorisation for Annual Requirement).
- Duty Free Import Authorisation (DFIA).
- Duty Remission Scheme.
- Duty Drawback (DBK) Scheme, administered by Department of Revenue

**A.1 ADVANCE AUTHORISATION SCHEME:**

- The Advance Authorisations are issued to allow duty free import of inputs, which are physically incorporated in the export product (after making normal allowance for wastage). In addition, fuel, oil, energy catalysts, etc., which are consumed in the course of their use to obtain the export product are also allowed under the scheme.
- The raw materials/inputs are allowed duty free as per the quantity specified in the Standard Input-Output Norms (SION) notified by the DGFT or as per self-declared norms of the exporter in terms of FTP. The Advance Authorisations are not issued for some specified items like vegetable oils, cereals, spices, honey etc.. The Advance Authorisation holder is required to fulfill the export obligation (EO) by exporting a specified quantity/ value of the resultant product.
- The Advance Authorisations are issued both for physical exports as well as deemed exports. These are also issued on the basis of annual requirements of the exporter, which enables him to plan his manufacturing / export programme on a long term basis. All provisions of Advance Authorisation scheme would apply to Advance
- Authorisation for Annual Requirements except as specified under FTP. The Advance Authorisations are issued on pre-export or post export basis in accordance with the

FTP and procedures in force on the date of issue of Authorisation. The Advance Authorisations are issued either to a manufacturer exporter or merchant exporter tied to a supporting manufacturer(s).

- The Advance Authorisation schemes are: normal Advance Authorisation,
- Advance Authorisation for Annual Requirement and Advance Authorisation for Deemed Export schemes
- The Advance authorisations are issued with a minimum of 15% value addition with effect from the current FTP,
- In case of Authorisation for Tea, the minimum value addition is 50% as per FTP Higher value additions are prescribed for exports for which payments are not received in freely convertible currency.
- The Advance Authorisations and/or materials, imported thereunder are not transferable even after completion of export obligation.
- The Advance Authorisation holder is required to file a bond with 100% bank guarantees for the duty difference at the time of import of duty free inputs. Certain categories of exporters, however, have been exempted from filing the Bank Guarantees subject to certain conditions. In the event of failure to fulfill the EO the Advance Authorisation holder becomes liable to pay the differential Customs duties with interest.
- The Advance Authorisations normally have a specified validity period from the date of issue with certain exceptions as per FTP. The relevant DGFT authority who issues the Authorisation is competent to grant revalidation or grant extension of EO period beyond the prescribed period.



**A.2 DUTY FREE IMPORT AUTHORISATION (DFIA)**

The Duty Free Import Authorisation (DFIA) scheme introduced in 2006 is similar to Advance Authorisation scheme in most aspects with minimum value addition requirement of 20%. Once export obligation is completed, transferability of authorisation/ material imported against the authorisation is permitted. However, once the transferability has been endorsed, the inputs can be imported/domestically sourced only on payment of Additional Customs duty/Central Excise duty. The DFIA Authorisations are issued only for products for which

SION have been notified.

**A.3 REVISION**

What is advance authorization?	It is a permission granted to a manufacturer exporter or a merchant exporter tied to a supporting manufacturer to import inputs etc. without import duty.
Why is it called 'advance' authorization?	Because the benefit of duty free inputs is taken in advance before the fulfillment of export obligation.
What is the scheme about?	An exporter intending to produce and export certain goods can approach the DGFT office to get the authorization to import necessary inputs, oil, catalysts and fuel free of duties. These can also be obtained locally without duties.
Is the scheme available for all goods exported?	No. primarily available to goods for which SION has been prescribed. However, a request can be made to fix SION on adhoc basis where SION is not available, by self declaration.
What is SION?	It is Standard Input Output Norms prescribed by Norms Committee on export goods. It is simply input output ratio.
What are the goods not eligible for import?	<ol style="list-style-type: none"> <li>1. Prohibited goods</li> <li>2. Energy</li> </ol>

	STE goods(which can be imported only through 3. STEs)
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What are the duties eligible for exemption	All import duties including Anti dumping duty and safeguard duty if any.
What is the validity period for importation?	12 months. The goods must be imported within 12 months from the date of authorization. For supplies under deemed export scheme, it can be more than 12 months.
Are there any conditions attached to the authorization?	Yes. Main conditions 1. Actual user condition (AUC) 2. Fulfilment of Export obligation 3. Positive Value Addition
Is there any minimum value addition?	Yes. 15% AA Scheme and 20% for DFIA Scheme.
How is the value addition computed?  What is export obligation under the scheme?	$VA = (A - B) / B \times 100$ <p>Where A = FOB Value of exports; B = CIF value of Imported goods (including value of goods imported free of cost from a foreigner)</p> <ol style="list-style-type: none"> <li>1. The export goods should be eligible</li> <li>2. They should be exported, within the stipulated time (normally 18 months from the date of authorization)</li> </ol> <ol style="list-style-type: none"> <li>1. prohibited goods are not eligible</li> <li>2. exports may be actual exports, deemed exports and supply of intermediate goods to another AA holder. Actual exports include supplies to SEZ also.</li> </ol>

**A.4 Main Differences Between AA and DFIA Schemes:**

Advance Authorisation Scheme	DFIA Scheme
Form ANF- 4A	Form ANF- 4H
Fuel also allowed	Fuel not eligible to be imported free
Eligible for SION/ Non SION goods	Only for SION products
Min. Value addition -15%	20%
Scheme/ inputs never transferable	Both transferable after fulfilling export obligation

**B. EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME:****B.1 The Concept:**

This is a scheme relating to import of capital goods at Zero duty. The benefit of zero duty is subject to fulfilment of export obligations and other conditions.

**The objective:** To facilitate import of capital goods for producing quality goods and services to enlarge India's export competitiveness.

**Schemes:**

Import capital goods by enjoying the zero duty benefit first and then fulfil the export obligation conditions within the stipulated period. *This is called **Pre-Export EPCG***

**Post Export EPCG:** Under this, capital goods are imported first by paying import duty, then remission (refund) of import duties is claimed after fulfilling export obligation.

**Eligibilities:**

Capital goods' has been defined under FTP.

Such capital goods eligible must be used as per the eligibility conditions.

**Conditions:**

- The scheme is subject to actual user condition and a certificate of installation in own premises shall be produced from Excise Dept./ other authorities.

- Import must be made within 18 months of date of issue of authorization and no extension is granted.
- Even the capital goods under the scheme are not transferable till the Export obligation (E.O) is fulfilled.
- The importer has to achieve the export turnover of 6 times the amount of import duty saved within 6 years of authorization.
- Eg. Machine X is imported duty free. Product Y is produced by using Machine X.
- The exporter has fulfilled the export obligation by achieving the export turnover of Y within the stipulated period.
- Eg. Duty saved on X by importing under the scheme is Rs. 25 lac. Export value of Y exported in 6 years is Rs. 1.5 Crore. ie. 6 times the duty saved.

**Capital Goods defined:** ' Means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernization, technological upgradation or expansion.

It includes packaging machinery and equipment , refrigeration equipment, power generating sets, machine tools, equipments and instruments for testing, research and development, quality and pollution control Capital goods may be for use in Manufacturing, Mining, Agriculture, Aqua culture, Animal husbandry, Floriculture, Horticulture, Pisciculture, poultry, sericulture and viticulture as well as for use in services sector

### **B.2 Content – Summary:**

- Under EPCG scheme, import of capital goods which are required for the manufacture of resultant export product specified in the EPCG Authorization is permitted at nil/concessional rate of Customs duty. This Scheme enables upgradation of technology of the indigenous industry. For this purpose EPCG Authorizations are issued by RA
- (Regional Authority) of DGFT on the basis of nexus certificate issued by an independent chartered engineer.
- At present the EPCG Authorization holder is permitted to import capital goods at 0% Customs duty. Under the 0% duty EPCG scheme the Authorization holder is required to undertake export obligation (EO) equivalent to 6 times of the duty saved amount on the capital goods imported within a period of 6 years reckoned from the date of issue of Authorization.
- EO under the scheme is to be over and above the average level of exports achieved by the authorization holder in the preceding three licensing years for the same and

similar products. EPCG Authorizations are issued to manufacturer exporters and merchant exporter with or without supporting manufacturer, and service providers.

- EPCG scheme is also available to a service provider who is designated/certified as a Common Service Provider
- (CSP) by the DGFT or State Industrial Infrastructural Corporation in a Town of Export Excellence. EPCG authorization issued to a CSP gives details of the users and the quantum of EO which each user has to fulfill. The CSPs as well as the specific users are under an obligation to fulfill the export obligation under the scheme.
- The EPCG Authorization specifies the value/quantity of resultant export product to be exported against it. In the case of manufacturer/merchant/service exporters, such EO is required to be fulfilled by exporting goods manufactured or capable of being manufactured or services rendered by the use of capital goods imported under the scheme.
- The EPCG Authorization holder is required to file bond with or without bank guarantee with the Customs prior to commencement of import of capital goods. Bank guarantee equal to 100% of the differential duty in case of merchant exporters and 25% in case of manufacturer exporters is required to be submitted except in case of a few exempted categories
- Capital goods imported under EPCG scheme are subject to actual user condition and the goods imported cannot be transferred/sold till the fulfilment of EO. In order to ensure that the capital goods imported under
- EPCG scheme are utilized in the manufacture of resultant export product, after importation/clearance of capital goods from Customs, the Authorization holder is required to produce certificate from the jurisdictional Central Excise Authority or Chartered Engineer confirming installation of such capital goods in the declared premises.
- In order to ensure proper account of fulfilment of EO, the EPCG Authorization holder is required to indicate the EPCG Authorization No./date on the body of the Shipping Bill/invoice (in case of deemed exports). After fulfilment of specified EO, the Authorization holder submits relevant export documents along with EPCG Authorization to the DGFT authorities for the purpose of obtaining EO discharge certificate.
- After obtaining EO discharge certificate from DGFT, the Authorization holder produces the same before Customs for the purpose of obtaining redemption of

bond/BG filed by him. This is to ensure that the Authorization holder maintains a specified level of EO throughout the EO period in addition to average EO.



**B.3 Revision:**

<p>What are the capital goods eligible under the scheme?</p> <p>Hint: definition is applicable for the FTP as a whole. But eligible capital goods have been given in EPCG scheme in Chapter 5</p>	<p>1. Cap. Goods as defined including those in SKD/CKD condition.</p> <p>2. Computer software Systems;</p> <p>3. spares, moulds, dies jigs, fixtures, tools and refractories</p> <p>for initial lining and spares refractories; and</p> <p>4. catalyst for initial charge plus one subsequent charge.</p>
<p>Is the scheme available for capital goods imported as project imports also?</p>	<p>Yes. The E.O is to be fulfilled as per the duties actually paid or payable.</p>
<p>What are the capital goods NOT eligible under the scheme?</p> <p>Are all goods under the definition eligible under the scheme?</p> <p>Hint: Power generating sets are capital goods as per the definition. But they are not eligible under the scheme</p>	<p>1 Second hand goods.</p> <p>2. Capital goods including captive power plants and generator sets</p> <p>For</p> <p>(i) Export of electrical energy</p> <p>(ii) Supply of electrical energy under deemed export</p> <p>(iii) Use of energy in own unit</p> <p>(iv) Supply/ export of electricity transmission services</p>

<p>What is the export obligation?</p> <p>In which currency it is to be considered?</p> <p>Hint: The amount should be received in easily convertible currency. However, there are relaxations with regard to Sale to SEZs and deemed exports.</p> <p>In case of certain services, it can be in rupees also.</p>	<p>It is 6 times the duty saved on imports. The 6 times turnover shall be achieved in 6 years from the issue of authorization.</p> <p>Note: This should be over and above the average level of exports achieved by the applicant in the preceding 3 licensing years for the same and similar products within the overall E.O. period.</p>
<p>What are the export turnovers included to count Export Obligation?</p>	<p>1. Goods exported under AA, DFIA, DBK/ Reward schemes.</p> <p>2. turnover of physical exports and supplies under specified deemed exports( say EOU/ STP/ EHTP etc.)</p> <p>3. forex received for R&amp;D services and royalty payments.</p> <p>4. INR (Rupees) received for specified services.</p>
<p>Is the benefit of the scheme available for indigenous procurement also?</p>	<p>Yes. Capital goods can be purchased locally also. In such a case the EO is reduced to 75%.</p>
<p>How is the duty saved is calculated?</p>	<p>Notional duties are calculated on FOR value.</p>

What about the post export EPCG?	It is also available. It is claimed after paying import duties.
Hint: In the case of post EPCGS, the EO will be 85% only. But the Average EO to be achieved shall be 100%.	The import duties will be remitted. But the BCD will be remitted in freely transferable credit scrips.

### Validity Periods of Authorisation:

Authorisation	Validity period
(i) Export Authorisation (ii) Advance Authorisation DFIA and replenishment authorisation (iii) for gems and jewellery	12 months
Export of SCOMET items	24 months
Import authorisation for restricted items	18 months
EPCG	18 months
Deemed exports	12 months or coterminous with contracted duration of project authorisation whichever is more

**C. Status Holders Scheme:**

*Under this, exporters are given star status based on their export performance in dollar terms. These star status holders enjoy certain privileges over others.*

**Status Category:**

Status Category	Export Performance FOB/ FOR (in US \$)
One Star Export House	3 millions
Two Star Export House	25 millions
Three Star Export House	100 millions
Four Star Export House	500 millions
Five Star Export House 2000	2000 millions

**Conditions for grant of Status:**

- Export performance is necessary in at least two out of three years.
- Export performance is not transferable.
- Exports made on re export basis is not counted.
- Export of items under Authorization, including SCOMET items included

**Privileges available to status holders:**

- Authorization and customs clearances may be granted on self declaration basis.
- SION may be fixed for them on priority basis within 60 days
- Exemption from bank guarantee for schemes under FTP.
- Exemption from compulsory negotiation of documents through banks
- Export warehouses permitted for 2 star above holders.
- star and above holders get the facilities of ACPs (Accredited Clients Programme)
- Self certification of Certificate of Origin is allowed.

**General provisions of Export Promotion Schemes:**

- Imports and exports under the Export Promotion schemes are restricted to limited ports, airports, ICDs and
- LCSs, as specified in the respective Customs duty exemption notifications. However, the Commissioners of
- Customs are empowered to permit export/import under these schemes from any other place which has not been notified, on case to case basis by making suitable arrangements at such places.

#### **D. Reward /(Incentive Schemes):**

##### **D.1 The Concept:**

Govt. announced reward schemes to promote exports in Chapter 3 of FTP under the title "EXPORTS FROM INDIA SCHEMES." There are separate schemes for goods and services.

The scheme for goods export is known as **Merchandise Exports from India Scheme (MEIS)**. The scheme for services exports is known as **Service Exports from India Scheme (SEIS)**. Rewards offered under the scheme are in the form of easily transferable duty credit scrips.

Rewards are also available to export of articles through foreign post offices or couriers using e-Commerce mode

Rewards are computed as percentage of FOB value of goods or NFE (Net Foreign Exchange) of services exported.

**The objective:** To provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing field

##### **D.2 Schemes:**

##### **1. Merchandise Exports from India Scheme (MEIS)**

- Earlier there were 5 different schemes. Now all these schemes have been merged into a single scheme, namely
- Merchandise Export from India Scheme (MEIS) and there would be no conditionality attached to the scrip issued under the scheme. The main features of MEIS, including

details of various groups of products supported under MEIS and the country groupings are at Annexure -1

- Under Annexure -1, countries for export have been grouped into: Category A (Traditional Markets, like, USA, Canada and European Union) Category B ( Emerging & Focus Markets like Africa, Latin American countries, China, Japan) Category C (Other markets)
- Products and incentives have also been specified.
- Rewards for export of notified goods to notified markets under Merchandise Exports from India Scheme (MEIS) shall be payable as percentage of realized FOB value (in free foreign exchange).
- The debits towards basic customs duty in the transferable reward duty credit scrips would also be allowed adjustment as duty drawback. At present, only the additional duty of customs/excise duty /service tax is allowed adjustment as CENVAT credit or drawback as per Department of Revenue rules. These scrips cannot be used for payment of Goods and Services Tax.

## **2. Service Exports from India Scheme (SEIS):**

The Scheme:

This reward scheme is available to service exporters.

This has replaced the earlier scheme called a "Served From India Scheme" (SFIS).

**Applicability:** This is applicable to 'Service Providers located in India not alone to 'Indian Service Providers'.

Hence it provides for rewards to all service providers of notified services, who are providing services from India regardless of the constitution or profile of the service provider.

**Rewards:** The list of services and the rates of rewards under SEIS are at Annexure-  
The rate of reward under SEIS would be based on net foreign exchange (NFE) earned.  
 $NFE = \text{Inflow of forex} - \text{remittances in forex}.$

The rewards are issued in the form of duty credit scrip, with no actual user condition and will no longer be restricted to usage for specified types of goods but be freely transferable and usable for all types of duties and taxes payable on imports and local procurements. Debits would be eligible for CENVAT creditor drawback.





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